Supreme Court, U.S.
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NUMBER:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

ROBERT J. CIAFFONI,
PETITIONER

v.

ELIZABETH C. COWDEN,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE COMMONWEALTH

OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

ROBERT J. CIAFFONI
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ATTORNEY FOR PETITIONER
PRO SE

2:30 PM

QUESTIONS PRESENTED

I. Does an appearance-of-bias, politically embroiled and questionably motivated Pennsylvania Supreme Court have the right to deny Petitioner's allocatur, since that act of denial revolves about the above cited negativism of that court and its lesser courts, and which denial is contrary to that court's earlier adjudications in the same case and other like cases, as to the propriety, admissibility and applicability of comparative stylistic[1] evidence in the elicitation of fraud?

II. Is Petitioner entitled to equitable relief since the Pennsylvania Supreme Court violated the due process and civil rights of the Petitioner by its effective endorsement of Judge Pawelec's unsound and otherwise suspect adjudication dated 22 June 1987, and its progeny, effected by that judge's injudicious disregard, untimely foreclosure and ill treatment of duly submitted comparative stylistic evidence, and that of its unwarranted characterization as "mere suspicion and conjecture"?[2]

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[1]For an incisive insight and introduction into the instant case, see the definition of "comparative stylistics" at page 282 of the latest (6th, 1990) edition of *Black's Law Dictionary*.

[2]For the source of the quote, "mere suspicion and conjecture," see page 52 of Judge Pawelec's 22 June 1987, 54-page adjudication, in the paragraph beginning: "And so in the instant case....," replicated here under Appendix A, page A54.

PARTIES TO THE CASE

ROBERT J. CIAFFONI,

Petitioner,

v.

ELIZABETH C. COWDEN,

Respondent.

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An illustrated example of the established acceptance of stylistic evidence in the academic and legal communities, see "**Forensic Stylistics**" by Gerald R McMenamin's March 1993 Special Issue of the "**Forensic Science International**"..... H28, H30
249 pages, journal: Chapter 4 "**Stylistics as Evidence**"; pages 57-74; Chapter 5, "**The Admissibility of Stylistic Evidence**" pages 75-110; Chapter 6 "**Stylistic Analysis in Document Examination**" pages 111-120..... H30

For the detailed list of authorities and their relationship to the case at bar, see R.178a-197a. For the 46-unit chart establishing that the 1967 and 1968 wills are not comparative stylisticly "based upon" or "derived after" the 1965 will, see the "comparison of literary and typing style of the three wills proffered by Proponents" at R73a-78a. For the rationale and authorities unequivocally establishing that Gray did not type certain DiSalle office wills, and further that Gray did not type the pair of questioned wills, see *passim*, the 18 November 1992 "Second Motion for New Trial, *Nunc Pro Tunc*" at R79a-99a.

OPINIONS BELOW

1. Court of Common Pleas of Washington County, Pennsylvania (Honorable Earl S. Keim, presiding in a 1978, jury-dismissed trial), denying (1) comparative stylistic evidence of fraud and (2) implicit declarations of fraud made by testator Paul Ciaffoni, Judge Keim ruled the questioned will (dated 10 May 1968) valid. Reported at *Ciaffoni's Estate*, 60 Washington County Reports 88, dated 27 August 1979.

2. Supreme Court of Pennsylvania on 30 April and 16 June 1980, in a split decision without rationale, "affirmed" the opinion of the Keim Court. Vigorous dissent with rationale by Justice Roberts. Reported at *Estate of Paul Ciaffoni*, deceased, 418 A.2d 1136, 491 Pa. 46. Petitioners writ of certiorari to this Court denied, 101 S. Ct. 1493 (1981).

3. On 20 May 1982, just three weeks after the Petitioner, et al, charged the Justices of the Pennsylvania Supreme Court, et al, with due process and the civil rights violations in the U.S. District Court of Western Pennsylvania (*Ciaffoni v. Pennsylvania Supreme Court, et al*, 550 F. Supp. 1246), a unanimous Pennsylvania Supreme Court in an unprecedented act, vacated and reversed the Keim Curt and itself, and remanded the case for a new trial. In justification, that highest Pennsylvania Court (1) adopted the identical arguments promulgated by Justice Roberts as to the admissibility and applicability of comparative stylistic evidence; (2) cited this Court in *United States v. Ohio Power Co.*, 77 S. Ct. 652 (1957). Reported at 446 A.2d 225, 498 Pa. 267, 36 ALR4th 595. Respondent's writ of certiorari to this Court denied, 101 S. Ct. 447 (1982). At page 6 of that writ, Respondent via her Attorney Richard

Sprague, reiterated that which represents the method of proof of the charged collusive perjury and accompany fraud, and that which the Pennsylvania Supreme Court had effectively and unanimously ruled to the contrary by their 20 May 1982 reversal:

> [T]he contestants had not established that such linguistic analysis techniques [codified as comparative stylistics and gramformprints] had any validity, whatever.

4. At No. 63-74-942, the Common Pleas Court of Washington County, Pennsylvania, Honorable Edmund S. Pawelec presiding, following a June-July 1983 Philadelphia trial, declared the questioned '68 will valid, some four years after the 1983 trial, in a 22 June 1987 Order (Appendix A). On 28 December 1989, the Supreme Court of Pennsylvania denied Petitioner's allowance of appeal from the Keim Court. (Appendix C, item 4)

5. On 7 August 1991, the Pawelec Court, in a unilaterally oriented response to Respondent's 6 April 1990 "Petition for Assessment of Costs and Fees" assessed this Petitioner the intimidating sum of $31,574.14, plus interest. (R.355a) The assessment is predicated on (1) this Petitioner's ongoing, sustained and exponentially enhanced evidence and rationale ("vexatious" to Respondent, those who witnessed falsely in her behalf, and key elements of the Pennsylvania judiciary). Contrary to Judge Pawelec, said evidence was not "*ex parte*" (A54), but was duly submitted. Said evidence overwhelmingly establishes that the oral testimony underpinning the determinate issues of the physical and testamentary origins of the pair of questioned wills proffered by, and in behalf of the Respondent, is premised on perjured testimony. (Appendix D)

6. On 3 September 1990 and 18 November 1992, Petitioner filed respective first and "Second Motion[s] for New Trial, Nunc Pro Tunc" with the Pawelec Court at 63-74-942, in the Common Pleas Court of Washington County, Pennsylvania, reiterating and yet further enlarging the evidence and rationale prior and duly submitted. (R.79a-341a) Judge Pawelec, except for acknowledging its receipt, failed and refused to otherwise respond to the 3 September 1990 Motion. On 12 January 1993, Judge Pawelec "dismissed" the 18 November 1992 Motion. (Appendix B)

7. By its "quash" Order of 1 December 1993, the Superior Court of Pennsylvania adopted the now obviously untenable position of the Respondent and that of the like position of the Pawelec Court as expressed in that court's unsound 22 June 1987 Order. Illustrative is the unrebutted, documented charges by Petitioner of appearances of bias in an episode that focuses on the publicized close personal friendship between sitting Superior Court Judge Donald E. Wieand and his former colleague on the same Court; that is "the real defendant" in the instant case, Richard DiSalle. Judge Wieand sat in judgment of DiSalle in the instant case. See, *inter alia*, page 3, item IV, of Petitioner's 21 July 1992, Superior Court of Pennsylvania "Petition for Reconsideration by the Full Court (of the 9 July 1992 Order)."

8. For an illustrative example of the arguments of the Petitioner presented to the Superior Court of Pennsylvania see Petitioner's "Application for Reargument of 1 December 1993 Order" in the Superior Court of PA at No. 278 PGH 1993, dated 15 December 1993. See Appendix G herein. The above-referenced 1 December 1993 order is Exhibit A therein.

9. For an illustrative example of the arguments of the Petitioner presented to the Supreme Court of Pennsylvania see Petitioner's "Application for Reconsideration of 7 June 1994 Order", dated 14 June 1994, at No. 98 W.D. Allocatur Docket 1994.
See Appendix H herein. The above-referenced 7th June 1994 order is Exhibit 1 therein.

10. By its 18 August 1994 denial of allocatur the Pennsylvania Supreme Court effectively, and in like manner to that of the Superior Court, endorsed the position of the Respondent. Illustrative is the unrebutted, documented charges by Petitioner of appearances of bias in an episode that focuses on the publicized, close personal relationship between sitting Pennsylvania Supreme Court Justice Nicholas P. Papadakos and his finance manager, DiSalle, in the campaign that resulted in Justice Papadakos' election to Pennsylvania's highest court. Justice Papadakos sat in judgment of "the real defendant" DiSalle in the instant case. See, *inter alia*, pages 4 and 5, item 8, of Petitioner's 14 June 1994 "Application for Reconsideration of 7 June 1994 Order" to the Pennsylvania Supreme Court.

As to the unrebutted documentation of the appearance of bias here, and in item 8 above, the Supreme Court of the United States stated in *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 89 S. Ct. 337, 340 (1968):

> [A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias.

As to the determinant value of the grossly inconsistent and otherwise obvious perjured testimony of DiSalle and Gray, as alleged non-parties to the instant case, the Pennsylvania Supreme Court speaks to that issue, if, in fact they can be considered non-parties, in support of the Petitioner's arguments. See *Commonwealth v. Brady*, 510 Pa. 123, 502 A.2d 66 (1986); at 510 Pa. 125:

> We granted the Commonwealth's petition for allowance of appeal to reconsider this Court's long-standing rule that prior inconsistent statements of a non-party witness to a trial cannot be used as substantive evidence to prove the truth of the matters asserted therein but may only be used for the limited purpose of impeaching the credibility of the witness. We now discard this antiquated rule and hold that such statements may be used as substantive evidence where the declarant is a witness at trial and available for cross-examination.

JURISDICTION

The Petition for Allocatur by the Supreme Court of Pennsylvania was denied by the Justices of that court on 18 August 1994.

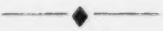
The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. Section 1254. The Petitioner also cites Rule 13 of the Rules of the Supreme Court stating that this Petition is filed within 90 days of the date of the last decision.

CONSTITUTIONAL ISSUES

That a review on a writ of certiorari is sought herein pursuant to the judicial discretion of this Honorable Court upon reasons which Petitioner avers are special and important considerations and which involve the denial of Petitioner's rights to due process of law guaranteed by Amendment V and XIV of the Constitution of the United States, and Sections 1 and II of the Constitution of the Commonwealth of Pennsylvania.

Amendment V of the Constitution of the United States provides in part: "No person shall ... be deprived of ... property, without due process of law?" Amendment XIV provides in part: "No State ... shall deprive any person of ... property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws."

Section 11 of the Constitution of the Commonwealth of Pennsylvania, provides in part: "... every man for an injury done to him in his lands, goods, person or reputation shall have remedy by due course of the law, and right and justice administered without sale, denial or delay."



STATEMENT OF THE FACTS

[Referenced Record "a" below and throughout this submission is the 408-page record submitted in the Petitioner's appeals to the Pennsylvania Superior Court on 27 April 1993, at 278 Pittsburgh 1993, and the Pennsylvania Supreme Court on 28 February 1994, at 98 Western District Alloc. Dkt. 1994.] See Appendix F.

"I did not sign that will! Bring them to me right now!"

The foregoing "scream" by Paul Ciaffoni, made some three weeks before his unexpected demise on 23 September 1974, is the background from which sprang the instant case. Paul was born in 1895.

Concetta Ciaffoni (born 1900), Paul's wife of some 56 years, had evoked the scream when she inquired of Paul:

"Do you know that Elizabeth is getting the Reed Farm and the West Liberty A&P [in your will]?"

In context, "them" is the duo Paul had entrusted to coordinate the reduction of his testamentary intent to legalese and paper:

1. Elizabeth (born 1940), a college graduate and the youngest of their seven children, managed Paul and Concetta's farm and real estate office, on a number occasions as the singular employee. As a matter-of-course, for a number of years, prior to mid-1964 as a part-time employee, and thereafter as a sometime erratic, full time employee, Elizabeth resorted to her personal, uncommon 11-point electric typewriter in the preparation of office papers. Those papers included leases and deeds. Elizabeth had also attended formal real estate classes and was regularly assisted by her brother Robert, the Petitioner, and the third eldest of the seven children of Paul and Concetta.

2. Attorney Richard DiSalle ("DiSalle"; lawyer, beginning in February 1952), had been a sole practitioner from 1955-70. In January 1970, DiSalle began an

8-year term as a Common Pleas Court Judge of Washington County, Pennsylvania. In answer to a question at his 15 September 1977 deposition, as to the "estimate" of "how frequently" he "prepared wills for clients," DiSalle answered:

"Well, we had a pretty good will practice. I would say we did nine or ten a month." (R.34a)

DiSalle's office staff consisted of a single, longtime (1959-70) office employee, secretary-typist, Frances M. Gray ("Gray"). Gray, had come to DiSalle's office as a recent high school graduate with no other formal education. Gray, in her 15 September 1977 deposition, substantially confirmed DiSalle's "estimate" above, with her estimate of "one to three wills weekly."

In context, the "Reed Farm and the West Liberty A&P" referenced in Concetta's inquiry to Paul, is the essence of the devised to Elizabeth in the will dated 10 May 1968 ("the '68 will"). The final 41-word sentence of that devised reflects an add on from that of the same devised to Elizabeth in the will dated 29 November 1967. Separately annotated copies of the '67 will were proffered by DiSalle and Elizabeth at their respective 15 and 16 September depositions.

That "second" will consists of seven pages of type prepared on DiSalle's longtime (1964-70), uniquely, multi-appointed, readily recognizable, 5.4 Underwood Forum electric typewriter, Serial Number E16-9352179. ("5.4 refers to the number of lines of type per vertical inch. The standard is 6.0 lines.) That second will is dated 10 May 1968 . The targeted devise "TWELFTH" is on deviant, format-isolated page 4 of the 1968 will.

For an illustrative example of the DiSalle's involvement of a principle party in the case at bar with that of the political embroilment of the Pennsylvania Supreme Court, see Appendix E 3 February 1981 Petition of Writ of Certiorari at #80-775 by Petitioner et al.

REASONS FOR GRANTING WRIT

The unsoundness of Judge Pawelec's 22 June 1987 Order was made apparent and enlarged upon by his 12 January 1993 Order of exclusion (Appendix C) of vastly enlarged comparative stylistic evidence and rationale properly presented to him subsequent to the June-July 1983 trial in a "First (3 September 1990) and Second (18 November 1992) Motion for New Trial, *Nunc Pro Tunc*."

[Referenced Record "a" below, and throughout this submission is the 408-page record submitted in the Petitioner's appeals to the Pennsylvania Superior Court on 27 April 1993, and the Pennsylvania Supreme Court on 28 February 1994. Like referenced in Appendix A (pages A1 to A56) Judge Pawelec's 22 June 1987 Order (R.345a). For the definition of comparative stylistics and its controlling rationale and case citations relevant to this submission, see its definition in the latest (6th, 1990) edition of BLACK'S LAW DICTIONARY (R.195a)]

The above-referenced "First" Motion appears at R.101a, as a subdivision of the "Second" at R.79a.

On 1 December 1993, the Pennsylvania Superior Court at No. 278 Pittsburgh 1993 (Appendix C) effectively adopted Judge Pawelec's 22 June 1987 (Appendix A) unsound Order when it adopted the Respondent's

ambiguously titled and formatted "Application to Quash" (R.346a), which, in turn, is wholly predicated on Judge Pawelec's 22 June 1987 Order. The Petitioner's "Reply to 'Application to Quash Appeal'" was injudiciously ignored. (R.377a-381a). The serious ambiguities complained of in Respondent's "Application" were never rectified. (R.377a)



CONCLUSION

The Petitioner demonstrated in his arguments that the Pennsylvania judiciary violated his Constitutional civil and due process rights by their failure and refusal to address the underpinning issue of the case at bar. That issue is the unequivocal certainty that the case for the Respondent is premised on determinant perjured testimony and collusive fraud. Contrary to their own prior decisions in this very case[1] and others[2], the Pennsylvania judiciary, spearheaded by the equally unsound decisions of Judges Keim (27 August 1979) and Pawelec (22 June 1987) have seized upon those decisions to hold harmless "the real defendant" Attorney Richard DiSalle, to the detriment of the Petitioner. That fraud has been established beyond a moral certainty by the combination of the comparative stylistic idealism in the scenario of DiSalle's office and that of the 14-page body of the pair of questioned wills as to their typist origins -- even to the most naive of literates, it was not Gray, and to those

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[1]*Estate of Paul Ciaffoni*, 498 Pa. 267, 446 A.2d 225, 36 ALR4th 595 (20 May 1992) (Ciaffoni II)

[2]*Kane's Estate*, 312 Pa. 531, 168 A. 681 (1933), *West Homestead Boro v. Erbeck*, 230 Pa. 316, 79 A. 570 (1911)

only less naive, it was Cowden who was the composer of much and the typist of all of that pair of wills. Even a cursory comparison perusal of the pair of questioned wills with the 54 contemporaneous (1Jan66-31Dec69) [R.87a, item 4E]will exemplars presented to the Pawelec Court and, as in all submissions, to the attorney(s) for the Respondent, (R.87a-99a) reveals that the typist and composer of much of the 1968 will was one and the same person. See the 35 comparative stylistic analyses at R.109a-115a, item III, unequivocally establishing that the typist of the 1968 will was other than Gray.

Therefore, the Petitioner asks this Court to remand this case to an appropriate court for a trial by jury to adjudicate that which the Pennsylvania judiciary has thus far failed and refused to do; that is, to address the underpinning, determinant issue of the Respondent-established, unrebutted, and unrebuttable, collusive, conspiratorial perjury by the three principle advocates of the pair of questioned wills as to their physical and testamentary origins -- much of the voluminous evidence and rationale presented by the Petitioner was foreclosed by Judge Pawelec's unsound and incongruous 22 June 1987 Order, made more so by Judge Pawelec's erroneous statement charging the Petitioner with "*ex parte*" acts. (Appendix A: A54)[3]

DiSalle, by his futile attempts to explain a way the

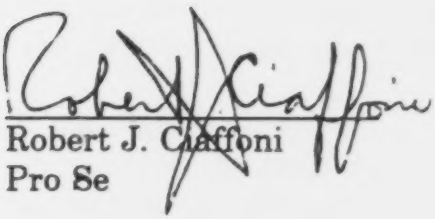
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[3]The "I was sloppy" statements (A27 and A48) of the Pawelec Court trial were incredibly proffered by DiSalle, and even more incredibly relied upon the Pawelec to replace of the thoroughly debunked "based upon" and "styled after [the 1965 will by Attorney Patrick C. Derrico]" (60 Washington County Reports 88, 90, 93 (1979)) relied upon by the Keim Court, in DiSalle's desperate attempt to explain away the obvious; that is, that the questioned wills are simply not the typewritten work product of Gray.

obvious deviations from Gray's known stylistics of grammar and format, characteristic of the pair of questioned wills, admitted to the existence of deviations. The futility of his attempts is manifested by his drastic shift from his "explanations" to the 1978 Keim Court, to that of the 1983 Pawelec Court.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury. This certification is a reiteration of the certification included in original 16 November 1994 submission.

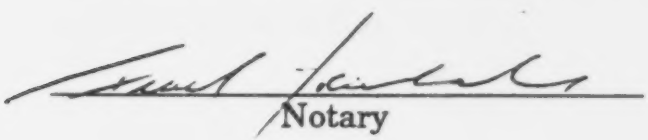
Respectfully submitted,



Robert J. Ciaffoni
Pro Se

311 Crawford Street
Canonsburg, PA 15317
(412) 745-3270

Sworn to and subscribed before me
this 19th day of December, 1994.



Notary

My Commission Expires:

Notarial Seal
Frank J. Scandale, Notary Public
Peters Twp., Washington County
My Commission Expires April 22, 1996
Member, Pennsylvania Association of Notaries

COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE:	:	
	:	
Estate of Paul Ciaffoni,	:	**No. 63-74-942**
	:	
Deceased	:	

DECREE

AND NOW, this **22nd** day of JUNE, 1987, the appeal of the contestants is dismissed, and the record is remanded to the Register of Wills of Washington County.

Unless written exceptions are filed to this Decree within twenty (20) days from the date hereof, the Opinion and Decree shall become absolute as of course.

/s/ Pawelec
Edmund S. Pawelec, J.
Specially Presiding

J. Brooke Aker, Esquire
for contestant, Concetta Ciaffoni

Robert J. Ciaffoni, pro se

Richard A. Sprague, Esquire
for proponents

COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE:	:	
	:	
Estate of Paul Ciaffoni,	:	**No. 63-74-942**
	:	
Deceased	:	

OPINION

PAWELEC, Adm. J. (Specially Presiding) **Jun. 22, 1987**

Paul Ciaffoni died on September 23, 1974, a resident of Washington County, survived by his widow, Concetta, seven (7) children, namely, Robert Ciaffoni, Margaret Soviero, Pauline Myers, Virginia Messa, Orlando Ciaffoni, Lorrayne Erikson and Elizabeth Cowden, and twenty-three (23) grandchildren.

On December 16, 1974, the Register of Wills of Washington County admitted to probate a document dated May 10, 1968, as the Last Will and Testament of Paul Ciaffoni (hereinafter referred to as P-2). Letters Testamentary were granted to Elizabeth Cowden and Concetta Ciaffoni. Robert Ciaffoni was also named as a co-executor but he declined the appointment. On December 11, 1975, Margaret Soviero, a daughter, filed an appeal from probate. On December 19, 1976,

decedent's widow, Concetta Ciaffoni, and a son Robert Ciaffoni filed separate appeals from probate. By order of the Washington County Orphans' Court Division dated January 31, 1977, the three appeals were consolidate for trial. An amended appeal from the probate of decedent's will was filed on behalf of Concetta and Robert on August 1, 1978.

On October 18, 1977, the Honorable Paul C. Simmons, of the Orphans' Court Division of Washington County, disqualified himself from presiding at the trial of this will contest. Thereafter, the Supreme Court of Pennsylvania appointed the Honorable Earl S. Keim to specifically preside in the matter.

Judge Keim heard the matter. He dismissed the appeals and upheld the validity of the will. Exceptions were filed and dismissed by decree and opinion dated August 26, 1979. *Ciaffoni Estate*, 60 Wash. County Reports 88 (1979).

Contestants filed an appeal to the Supreme Court of Pennsylvania alleging that pages of the will had been fraudulently substituted after its execution and that evidence of this fact had been improperly excluded. The decision of the lower court was affirmed by the Supreme Court *per curiam* and a petition for reargument was denied. *In Re Estate of Ciaffoni*, 491 Pa. 46, 417 A.2d 1136 (1980).

Contestants then filed a petition for a writ of certiorari to the United States Supreme Court. This was denied as was a petition for rehearing. *Ciaffoni v. Cowden*, 449 U.S. 1083 (1981), 101 S. Ct. 868; 450 U.S. 971, 101 S. Ct. 1493 (1981).

Contestants then filed a motion for a new trial *nunc pro tunc* in the Orphans' Court Division of Washington County. This motion was dismissed and contestants appealed to the Supreme Court. The Supreme Court treated this appeal as a second application for reargument. It then reversed its prior decree denying reargument, vacated its order affirming the decree of the Orphans' Court Division of Washington County which upheld the validity of the will in question, and remanded the record for proceedings consistent with the opinion filed. *In Re Estate of Ciaffoni*, 498 Pa. 267, 446 A.2d 225 (1982). Reargument was denied on May 20, 1982. Proponents then filed a writ of certiorari to the United States Supreme Court. This petition was denied on November 29, 1982.

On November 30, 1982, in response to a request from the Honorable Charles G. Sweet, President Judge of Washington County, the then Chief Justice Henry X. O'Brien appointed the Honorable Edmund S. Pawelec, Administrative Judge of the Orphans' Court Division of Philadelphia County, to preside over the retrial of this will contest.

On December 9, 1982, Robert Ciaffoni, *sua sponte*, filed a pleading with the Supreme Court entitled "PRELIMINARY OBJECTIONS TO RICHARD A. SPRAGUE, ESQ, (RAS)-INDICATED COURT OF COMMON PLEAS JUDGE OF PHILADELPHIA COUNTY SITTING ON W38 DUO". *In Re: Estate of Paul Ciaffoni, Deceased*, Nos. 81-1-32 and 81-1-79. Counsel for Elizabeth Cowden filed a motion to quash and/or strike these preliminary objections. Robert Ciaffoni filed an answer to this motion. The Supreme Court, by order dated January 10, 1983, denied the preliminary objections of Robert Ciaffoni.

Concetta Ciaffoni then filed a petition requesting that the appointed trial judge be recused and disqualified from further participation in this matter. This petition was denied by Order of Judge Pawelec dated April 13, 1983.

On April 13, 1983, an Order was also entered fixing a trial date and directing that trial be held in Philadelphia County. Concetta Ciaffoni and Robert Ciaffoni filed a writ of prohibition in the Supreme Court of Pennsylvania and named this trial judge as respondent. *Concetta Ciaffoni and Robert J. Ciaffoni v. Honorable Edmund S. Pawelec*, No. 21 W.D. Misc. Docket, 1983. In this action, petitioners requested that Judge Pawelec be disqualified from further participation in this case and/or be directed to try this case in Washington County and not in Philadelphia County. They argued that it was improper for this case to be tried in Philadelphia County since it arose in Washington County, involved Washington County residents, and would impose hardships upon the contestants to try the case in Philadelphia County. The request for the writ of prohibition was denied in a *per curiam* order of the Supreme Court dated May 24, 1983.

Concetta Ciaffoni and Robert Ciaffoni then filed a complaint for a writ of mandamus in the Pennsylvania Superior Court naming this trial judge as respondent. In this complaint petitioners again demanded that Judge Pawelec be prevented from trying the case in Philadelphia and be directed to try the case in Washington County. Preliminary Objections thereto were filed by proponents. The Superior Court then entered the following order:

AND NOW, to-wit, this 27th day of July, 1983,

upon consideration of petitioners' Complaint for Writ of Mandamus and respondent's Preliminary Objections thereto, the Preliminary Objections are granted and the Complaint shall be and hereby is denied.

PER CURIAM

In the will herein at issue, testator provided:

FIRST: For the payment of his just debts and funeral expenses.

SECOND: Gave, devised and bequeathed to his son Robert J. Ciaffoni all of his real estate situate in Cross Creek Township, Washington County, Pennsylvania, excepting and reserving therefrom certain mineral rights, and also all of the land and building comprising the Great Atlantic and Pacific Tea Company storeroom, together with the parking areas and lots adjacent thereto, situate in the City of Washington, Washington County, Pennsylvania, for and during the term of his natural life, with the remainder to his son Robert's three sons, Timothy, David and Robert, Jr. Further testator gave and bequeathed to his son Robert all of the cattle on said real estate at the time of his death.

THIRD: Gave, devised and bequeathed to his grandson Paul A. Ciaffoni (son of Orlando Ciaffoni), all of the land and buildings comprising the Great Atlantic and Pacific Tea Company storeroom, together with the parking areas and lots adjacent thereto, situate in Arnold, Westmoreland County, Pennsylvania, and also all of his real estate in Blaine Township, Washington County, Pennsylvania, and the Reed Crow Hill Farm, in Independence Township, Washington County, Pennsylvania, for and during the term of his natural life, with

remainder to his issue living at the time of his death, provided, however, that should his said grandson die without leaving issue surviving him, then testator gave, devised and bequeathed said remainder to the issue of his son Robert, living at the time of his said grandson's death.

FOURTH: Gave, devised and bequeathed to his son Orlando, all of the real estate and buildings, including parking areas, known as the Stardust Lounge in Baldwin Borough, Allegheny County, Pennsylvania.

FIFTH: Gave, devised and bequeathed to his daughter Virginia Messa, all of his real estate situate in the City of Philadelphia, Pennsylvania, and in the State of New Jersey.

SIXTH: Gave, devised and bequeathed to his grandsons, Paul Messa and Joseph Messa, Jr., all that certain tract of land situate in North Fayette Township, Allegheny County, Pennsylvania, known as the Wottengale Farm, and all land adjacent or contiguous thereto, excepting and reserving therefrom certain mineral rights.

SEVENTH: Gave, devised and bequeathed to his daughter, Lorrayne Erikson, all of the real estate he owned in Hopewell Township, Washington County, Pennsylvania, reserving therefrom certain mineral rights. Gave, devised and bequeathed to his grandson, Leif A. Erikson, all of the real estate he owned in Greene County, Pennsylvania, and in the State of West Virginia, reserving therefrom certain mineral rights.

EIGHTH: Gave, devised and bequeathed to his grandson Anthony C. Soviero, all that certain tract of

land situate in West Finley Township, Washington County, Pennsylvania, known as the Grummer Farm, in fee simple, reserving therefrom certain mineral rights.

NINTH: "I intentionally make no bequest to my daughter, Margaret Soviero."

TENTH: Gave, devised and bequeathed to his daughter Pauline Myers, in fee simple, all of his real estate in Farmingdale, Long Island, New York.

ELEVENTH: Gave, devised and bequeathed to his grandson Calvin Myers, Jr., all that certain tract of land situate in Independence Township, Washington County, Pennsylvania, known as Scott's Schoolhouse and all of the land contiguous thereto containing approximately 1100 acres, in fee simple, reserving therefrom certain mineral rights.

TWELFTH: Gave, devised and bequeathed to his daughter Elizabeth Ciaffoni, all that certain tract of land situate in Cecil Township, Washington County, Pennsylvania, known as the Reed Farm and all land contiguous thereto, in fee simple, reserving therefrom certain mineral rights and with further directions as to sale price if the property were sold in the future. He also gave and devised to his daughter Elizabeth all of the land and buildings comprising the Great Atlantic and Pacific Tea Company storeroom, together with the parking areas and lots adjacent thereto, situate on West Liberty Avenue, Pittsburgh 19, Pennsylvania.

THIRTEENTH: Gave, devised and bequeathed to his grandson Orlando James Ciaffoni, all that certain tract of land situate in Hanover Township, Washington County, Pennsylvania, known as the Freshwater Farm,

in fee simple, reserving therefrom certain mineral rights.

FOURTEENTH: Gave, devised and bequeathed to his grandson William Joseph Ciaffoni, all that certain tract of land situate in Hanover Township, Washington County, Pennsylvania, known as the Samuel Black Estate tract, together with all mineral rights therein, in fee simple.

FIFTEENTH: All the rest, residue and remainder of his estate, real and personal, including all of his right, title and interest in any coal, oil or gas, and other minerals, after the payment of taxes, testator gave, devised and bequeathed to his Trustees, his wife, Concetta, his son Robert J. Ciaffoni, and his daughter Elizabeth Ciaffoni, in trust, for the following purposes: (a) to pay $5,000.00 to each of his granddaughters who reaches the age of eighteen, and upon reaching the age of twenty-five, to pay an additional $20,000.00; (b) to pay all of the income from said trust monthly to his wife, Concetta Ciaffoni, for her life, and in the event said income exceeds the sum of $5,000.00 per month, the excess over and above $5,000.00 to be accumulated and added to the principal of the trust; the wife was then given a power of appointment over the principal and all accumulations of income, and in default of appointment, trustees are to distribute said principal and all accumulations of income to his issue living at the time of his wife's death, per stirpes, absolutely.

On behalf of the contestants, Robert Ciaffoni (hereinafter called Robert) has taken the position that the will admitted to probate is a forgery. He has not, *per se*, challenged the decedent's signature, but has stated on numerous occasions during the course of this

trial that the will was not generated by the decedent or by Richard DiSalle, the scrivener, but rather by Elizabeth Ciaffoni Cowden. (n.t. 2:53-54)

Although Robert does not contest the signature of the decedent on page 7 of the will, he denies that page 7 was composed by Richard DiSalle or typed by Frances Gray, his secretary. (n.t. 2:50) He and Concetta contend that Frances Gray did not type any of the pages of the will (n.t. 2:52) and that Elizabeth Cowden typed all of the forged pages (n.t. 2:54), or in the alternative, Elizabeth Cowden prepared the will with the assistance of Richard DiSalle, and, as a result of his sister's actions, she became the beneficiary of the most valuable pieces of realty in the estate.

Before discussing the issue of the validity of the will which has been admitted to probate and the applicable law, it is necessary to discuss a myriad of issues raised pretrial and during trial.

Contestants raised the issue of proper venue. They contend this case should have been tried in Washington County and not in Philadelphia. They had raised the same issue in the writ of prohibition they had filed in the Pennsylvania Supreme Court and in the writ of mandamus they subsequently filed in the Superior Court of Pennsylvania. As previously stated, both courts denied the relief contestants requested. At the commencement of the trial, the contestants again raised the issue of the trial being held in Philadelphia and requested that the trial be moved to Washington County alleging the same reasons as aforesaid. This motion was denied. We must note that throughout these proceedings, contestants have referred to this matter as a criminal case in which Richard DiSalle is the real

defendant. They have entitled the proceedings the "Ciaffoni-DiSalle Fraud Based Will Contest". (n.t. 2:24) They contend that Richard DiSalle had wide influence in Washington County and the surrounding counties and, thus, judges from those counties should not be permitted to preside over this case. Clearly, a trial in Philadelphia would minimize the alleged ability of Mr. DiSalle to influence the outcome of this litigation and contestants should not now be heard to complain. Further, a review of the record does not reveal any resulting prejudice suffered by contestants in regard to the merits of the case.

Contestants also filed pretrial and trial motions requesting that this trial judge recuse himself. They contend that his recusal is mandated by the fact that Judge Pawelec and Richard Sprague, counsel for the proponents, were both Assistants in the office of the District Attorney of Philadelphia County from 1957 to 1964. Also, in support of their motion, they contend that Richard DiSalle, one of the witnesses herein, was campaigning for election for the position of Judge of the Superior Court of Pennsylvania in 1981, the same year in which the trial judge was a candidate for retention as a Judge of the Court of Common Pleas of Philadelphia County. Contestants would have us find that these two facts, in and of themselves, require the recusal of the trial judge.

The standard for judicial recusal has been stated as follows: A judge is presumed to be fair and unbiased and the party seeking recusal has the burden to show bias and prejudice in the record. *Com. v. Council*, 491 Pa. 434, 421 A.2d 623 (1980). Recusal is required when there is a substantial doubt as to the judge's ability to preside impartially based on facts and circumstances of

record. *Com. v. Boyle*, 498 Pa. 486, 447 A.2d 250 (1982).

The proper practice on a plea of prejudice is to address an application by petition to the judge before whom the proceedings are being tried. He may determine the question in the first instance, and ordinarily, his disposition of it will not be disturbed unless there is an abuse of discretion. *Reilly by Reilly v. Southeastern Pa. Transp.*, 507 Pa. 204, 489 A.2d 1291 (1985). It is incumbent upon the proponents of a disqualification motion to allege facts tending to show bias, interest, or other disqualifying events. *Reilly by Reilly v. Southeastern Pa. Transp.*, supra.

In *Mun. Publications v. Court of Common Pleas of Phila. County*, 507 Pa. 1984, 489 A.2d 1286 (1985), Chief Justice Nix, after citing authority for the principle that a judge should recuse himself whenever he has any doubt as to his ability to preside impartially, stated:

> This does not mean that we will permit a party who is dissatisfied with the progress of the trial mid-stream to arbitrarily attempt to cause the disqualification of the presiding judge. Judge shopping has been universally condemned and will not be tolerated at any stage of the proceedings. (Citations omitted). Thus, where fabricated, frivolous or scurrilous charges are raised against the presiding judge during the course of the proceeding, the court may summarily dismiss those objections without hearing where the judge is satisfied that the complaint is wholly without foundation. 489 A.2d at 1289, 1290.

Clearly, upon application of the standards for

recusal to the facts alleged in support of contestants motion, it is evident that recusal was not required and that the motion was properly denied.

Further, as previously stated, the request to disqualify the trial judge was previously raised by contestants in their motions in the Supreme and Superior Courts, both of whom declined to grant the relief requested.

Contestants objected to the fact that the court refused to impanel a jury to determine the issue of whether the will admitted to probate was fraudulent. Contestants rely upon the language of 20 Pa. C.S.A. §777(c), which states: "when a contest shall arise concerning the validity of a writing alleged to be testamentary . . . the Orphans' Court Division, in its discretion, at any stage of the proceedings, may impanel a jury to decide any question of fact, but the verdict of the jury shall be advisory only." (Emphasis supplied) There is no statutory or constitutional right to jury trial in a will contest. See *In Re Estate of Fickert*, 461 Pa. 653, 337 A.2d 592 (1975). Furthermore, the refusal of the Orphans' Court to submit issues to a jury for advisory opinion is not an abuse of discretion. *Hunter Will*, 416 Pa. 127, 205 A.2d 97 (1964).

The trial of this case, as it was, took over twenty (20) days and raised a multitude of questions, very few of them having to do with factual issues. Impanelling the jury would have resulted in a multitude of delays inasmuch as numerous motions and issues, raised for the first time during the trial, were related to legal determinations which, of necessity, would have required a ruling out of the presence of the jury. Despite the trial judge's admonition to keep to relevant questions,

there were extensive monologues and unfocused examinations. Hearing the case by one fact finder rather than twelve kept this trial from being totally unwieldly. It was not error to refuse to impanel an advisory jury.

Prior to the commencement of the trial, contestants had subpoenas issued, directed to each of Justice John P. Flaherty, Justice Rolf Larsen, Richard E. McDevitt, Executive Director of the Judicial Inquiry and Review Board, Thomas J. McGinley, Special Investigator for the Judicial Inquiry and Review Board, and the Recorder of Deeds of Washington County, directing them to appear and testify at the trial of this will contest. Motions were filed to quash the subpoenas by the recipients thereof. After hearing argument on the motions, the subpoenas were quashed.

The argument in regard to the subpoena to Justice Flaherty is contained in the record at volume 2 pages 3 to 43. *Inter alia*, contestants allege it was necessary to have Justice Flaherty testify in order to show the relationship between Richard DiSalle and members of the Supreme Court, and, especially, the relationship between Mr. DiSalle and Justice Flaherty, to inquire into the reasons why the Supreme Court reversed itself, *In Re Estate of Ciaffoni*, 498 Pa. 267, 446 A.2d 225, (1982), and vacated its original decision which had sustained the validity of the contested will, and to inquire into whether Justice Flaherty did or did not participate on the deliberations and decisions of the Supreme Court on the two prior occasions when this will contest was before the Supreme Court even though the opinions of the Supreme Court state that he did not.

The argument in regard to the subpoena to Justice Larsen is contained in the record at volume 8, pages 49

to 66. The purpose of calling Justice Larsen was to develop the relationship between Mr. DiSalle and Justice Larsen and to inquire into the improprieties, if any, on the part of the Supreme Court in the disposition of the Ciaffoni case.

A variation of this argument was made in regard to the subpoenas to the representatives of the Judicial Inquiry and Review Board and is contained in the record at volume 8, pages 3 to 48.

Robert argued that there was a connection between Richard DiSalle, Justice Flaherty, Justice Larsen and Richard Sprague and that the records of the Judicial Inquiry and Review Board hearings in regard to Justice Larsen would reveal evidence thereof.

The creation of the Board was mandated by Article V, Section 18 of the Pennsylvania Constitution. This section describes all of the powers and responsibilities of the Board while also prescribing certain procedures which must be followed by the Board in the carrying out of its duties. Section 18 (h) provides that "all papers filed with and proceedings before the Board shall be confidential but upon being filed by the Board in the Supreme Court, the record shall lose its confidential character. The filing of papers and the giving of testimony before the Board shall be privileged."

In the case of Justice Larsen, the Board determined that no recommendation for discipline was warranted. The Board, therefore, did not file a record of its proceedings with the Supreme Court. Under these circumstances, Section 18 (h) clearly requires all proceedings to remain confidential. *In Re Subpoena on Judicial Inquiry and Review Board*, 317 A.2d 949 (Pa. 1986).

Accordingly, the subpoenas directed to Mr. McDevitt and Mr. McGinley with regard to the records of the Judicial Inquiry and Review Board were properly quashed.

The contestants have offered no evidence of any kind to show that either Justice Larsen or Justice Flaherty would have any factual knowledge about issues germane to the will contest before us. The offer of proof provided by contestants was based on surmise and conjecture. The court was convinced that nothing relevant to the case at hand would be addressed from the testimony requested.

A highly placed public officer should not be required to respond to a personal subpoena in his official capacity in the absence of compelling reasons. *Weir v. U.S.*, 310 F2d 149 (8th Cir. 1962). No such compelling reasons have been cited to this court warranting such testimony. It was, therefore, proper to quash these two subpoenas.

The court correctly quashed the subpoena issued to the Recorder of Deeds of Washington County. In their subpoena, contestants requested the Recorder of Deeds of Washington County to appear in court with 349 deeds and recitals filed of record in Washington County. The Recorder of Deeds stated in her motion to quash that "To require your petitioner to adequately respond to the subpoena would take a great deal of staff time and would require the withdrawal of a great number of documents from the records of the office of the Recorder of Deeds of Washington County to the great inconvenience and detriment of the public at large."

The Recorder also pointed out in her motion to quash that the records were available for copying by

contestants upon their payment of cost for same.

In quashing the subpoena, the court did not prohibit the use of the documents at trial, but rather declined to direct that the Recorder expend a great deal of time and effort in performing an unduly burdensome task at great cost to the public. In fact, copies of these deeds were admitted into evidence as exhibits. There was no prejudice to contestants.

On the 15th day of trial, the contestants attempted to amend their appeal from probate to include the ground of an after discovered will. (n.t. 15:11-15)

The contestants offered to prove, through testimony, the existence of a will, allegedly executed by decedent in 1970. It was admitted that the present whereabouts of this document were unknown and that no actual copies existed. Contestants did have a "simulated" unexecuted copy recreated for this litigation by the alleged scrivener, Patrick C. Derrico, Esquire.

Contestants presented the testimony of Concetta Ciaffoni (n.t. 14:169-172) and Margaret Soviero on this issue. Concetta testified that in 1972, while she was in Arizona, her husband came to visit her. (n.t. 14:170) She stated he had with him one piece of yellow paper. She further testified that she did not know if it contained typing or writing because she never looked at it. (n.t. 14:170) She stated that decedent told her it was a will and that he wanted her to sign it. (n.t. 14:170-171) Her understanding was that if he died first she would get everything and if she died first he would get everything. (n.t. 14:171-172) She did not agree to this suggestion and refused to sign anything. (n.t.14:170) Concetta did not offer any other evidence as to what

became of this yellow paper nor what was written on it.

Margaret Soviero testified that she was present in Arizona when her father came to see her mother. (n.t. 13:67-89) She stated that her father gave her this one page of yellow paper to read and that she read it. It was handwritten and signed. She identified the signature as that of the decedent but the rest of the writing was not that of her father. (n.t. 13:74) She could not remember the date on this paper but recalled the year as 1970. She identified exhibit C-59A as containing substantially the same provisions as were contained on this yellow piece of paper. Margaret further testified that "my father had come to get my mother to make a will. He wanted her to make a reciprocal will. He had gone to his attorney and had his attorney make this will and now he wanted my mother to go to her attorney and make a will exactly the same." (n.t. 13:78) However, her mother refused to make a will as requested by her husband saying, "I'm free. I don't want anybody telling me what to do." (n.t. 13:74) Margaret also testified that she had made some notations on the original of this yellow sheet of paper. (n.t. 13:69-71) Margaret then testified that she never had this "will" in her possession except when she read it, nor did she know if her father had left this will with her mother. Margaret did state that her father did not hand the will to her mother and that she did not know what he did with it. (n.t. 13:82)

Claude V. Falkenhan, Esquire, counsel for the contestants, requested the court to permit Mr. Derrico's testimony as recorded in the transcript of the first will contest trial to be introduced to "revoke" the probated will by the use of parol evidence and as substantiation of Margaret Soviero's testimony. (n.t. 15:8-14)

Mr. Falkenhan then argued that "my understanding of the parol evidence rule is that it is always admissible as to events after a challenged document, that at most, even if we found it, I suppose you are assuming an integration and merger provision in P-2 but parol can always come in of what happens after an execution, even in contracts." (n.t. 16:89)

The "simulated" will has been marked as Exhibit C-59A and Mr. Derrico's affidavit has been marked as Exhibit C-59B. In his affidavit, Mr. Derrico states that he wrote a will for Paul Ciaffoni in 1970. He states that Mr. Ciaffoni signed it and he witnessed it. There were no other witnesses. He states that the will he prepared was three or four paragraphs in length. He went on to aver that "I believe that the will began with a clause that revoked all prior wills, because it is ordinarily my practice to do so." The simulated will was prepared on April 29, 1976.

The law concerning the probate of "suppressed" or "destroyed" wills is clearly set out in *Murray Will*, 404 Pa. 120, 171 A.2d 171 (1961), wherein the court stated:

> Certain proof is essential to establish a destroyed or suppressed will: 1) that testator duly and properly executed the original will; 2) that the contents of the executed will were substantially as appeared on the copy of the will presented for probate; 3) that when testator died, the will remained undestroyed or unrevoked by him.

See also *Wasco Estate*, 444 Pa. 184, 281 A.2d 77 (1971). We must note that this law is applicable where the missing will is "destroyed" or "suppressed" by someone other than the testator.

But, where testator retains the custody and possession of his will and after his death the will cannot be found, a presumption arises, in the absence of proof to the contrary, that the will was revoked or destroyed by the testator. *Wasco Estate*, supra; *McCaffrey Will*, 453 Pa. 416, 309 A.2d 539 (1973); *Bates Estate*, 286 Pa. 583, 134 At. 513 (1926). To overcome such a presumption, the evidence must be positive, clear and satisfactory. *Murray's Estate*, supra; *Wasco Estate*, supra; *Dalbey's Estate*, 326 Pa. 285, 192 At. 129 (1937).

However, the previous discussion obscures the real issue before the court. In essence, contestants attempted to prove a revocation of the probated will as well as the existence of a later will through oral testimony. However, as against an existing will in writing, oral testimony may not be used to show that there was a later will which has been lost. *Harrison Estate*, 316 Pa. 15, 173 At. 407 (1934), *Koehlers Estate*, 316 Pa. 321, 175 At. 424 (1934). Contestants cannot prove revocation of a prior will by oral testimony alone. Such evidence is not admissible. *Leonard Estate*, 427 Pa. 363, 234 A.2d 856 (1967); see also, *Bechtel Estate*, 49 D. & C. 2d 643 (1970)

Thus, upon consideration of the applicable law to the facts, I must conclude that contestants' request to amend their appeal must be denied on its merits. Further, this request should also be denied on the basis that it was not timely. This motion was not filed prior to trial. It was orally filed after many days of this particular retrial. It was more than nine years after the death of this decedent. It involved facts which clearly were known to these contestants many years before. To permit this type of amendment at this stage of the case would be unjust.

On the 15th day of trial, contestants asked the court to interrupt the trial to permit their expert, Lyndal Shaneyfelt, to examine the questioned will (P-2), to remove the grommets therein and to make a microscopic and chemical analysis of the document. Contestants wanted to have P-2 disassembled to minutely examine that portion of each page which is under the flap of the backer for fingerprints and any other evidence tending to show that P-2 was disassembled and reassembled after it was executed by the testator.

The court permitted Mr. Shaneyfelt to testify as part of the offer of proof in support of this motion. Mr. Shaneyfelt stated that he would examine the document. He would recommend that the grommets be removed and that while wearing gloves, he would make a microscopic examination and photograph each page. In his opinion, the examination would be better conducted in a laboratory than in the courtroom. (n.t. 16:17-19)

Mr. Shaneyfelt stated that he is not a fingerprint expert. He went on to say that if any fingerprints were found, it then would be necessary to fingerprint those who allegedly had contact with the will so that a comparison of the fingerprints could be made. A fingerprint expert would have to be retained for that type of examination. (n.t. 16:19) Mr. Shaneyfelt would also be looking at and analyzing the variances between the pages, if any. (n.t. 16:48) On cross-examination, the witness stated that for the examination he would "want to have a day."

Mr. Falkenhan stated that even if no evidence substantiating the fraud came out of the examination of the will, the contestants' position is that the will is still a fraud. (n.t. 16:84) He went on to say that "if it

(witness) doesn't help our case, it would put us out of the ball park" (n.t. 16:86), and therefore, if the witness' report was not helpful, he would not be called despite the fact that the court would have had to interrupt the trial for two days in the middle thereof. Robert related to the court that he would only be satisfied with a "full examination" of the documents. Regardless of what the examination revealed, he would continue to press his objections to the probated will. (n.t. 16:86-88)

In opposition to contestants' motion, proponents introduced the testimony of Dr. David Crown, who testified that even if the document were opened and an analysis for fingerprints were made, it would not prove anything. (n.t. 17:26) Dr. Crown further stated that opening the will "leads to endless speculation . . . but God knows what it is going to reveal that will help anybody." Dr. Crown then stated that even if someone stuck their finger under the flap of the will, "there are reasons why you might not leave a trace, depending upon the way you developed the fingerprints." (n.t. 17:66) He also stated that even if fingerprints were shown, if they were not full prints, it would be necessary to determine if the partial print embodies sufficient points of individualities to form a basis for identification. (n.t. 17:72)

Robert cross-examined Dr. Crown on whether it was possible for an expert to identify a particular typist through a comparison of her typing style to other typists and their typing styles.

During Robert's cross-examination of Dr. Crown, contestants argued between themselves as to whether or not the witness should be permitted to handle the document. (n.t. 17:87) Robert conducted a thorough

and exhausting examination of the witness which took up over 125 pages of trial transcript and culminated only when the trial judge ended the examination by Robert due to repeated lack of relevant questioning.

On the 17th day of trial, after the noon recess, Mr. Falkenhan advised the court that contestants were desirous of having the document examined by ALM, a firm located in Virginia allegedly expert in fingerprint identification by laser.

The contestants failed to introduce sufficient probative evidence in support of their contention that the probated will had been tampered with, which would justify their motion for mounting a fishing expedition in the midst of the trial.

After hearing all of the testimony, both in favor and against the motion to open and examine the probated will (P-2), the court determined that granting the motion would have been ineffectual and that, furthermore, the motion was not timely made, and, therefore, denied it. (n.t. 17:156-157)

Contestants also made numerous other motions that were denied.

At the outset of the trial, Mr. Sprague stated that he was in the midst of a trial that had already gone on for five weeks. (n.t. 1:3) Therefore, another attorney in his office would be trying the Ciaffoni matter. Contestants first requested that Mr. Sprague be disqualified from trying this case "on the ground of conflict of interest", alleging that Mr. DiSalle was the real defendant herein and the subject of an investigation of the Judicial Inquiry and Review Board. (n.t. 1:17-21)

In the midst of this argument, however, Mr. Falkenhan argued that the trial of this matter be continued until such time as Mr. Sprague could properly handle the case. (n.t. 1:16-17) The trial judge properly denied both of these contradictory motions.

At several times during the first day of trial, contestants made a motion requesting that the court determine that the burden of proof rested upon the proponents to prove that the will was not a forgery. (n.t. 1:39, 50, 59, 97) This motion was dismissed. The law with respect to the burden of proof is well settled and is set forth *infra* at page 41.

Contestants also requested that the court grant their motion for summary judgment based upon the previous record of the case, as well as decisions made by Judge Simmons with regard to the management of the decedent's estate. (n.t. 1:36-49) They requested summary judgment numerous times during the course of the trial. These motions are without merit and properly denied by the trial court.

There were a number of other motions, also without merit, that were properly dismissed.

In regard to the execution of the will, proponents offered into evidence the Register's record of probate. They then offered the testimony of the three subscribing witnesses to prove the execution of the will.

Richard DiSalle testified that he was a practicing attorney and a member of the bar since 1952. (n.t. 1:135) He stated that he also had been a Judge of the Court of Common Pleas in Washington County, a Judge of the Commonwealth Court of Pennsylvania, a Judge

of the Superior Court of Pennsylvania, and presently is a senior partner in a law firm in Pittsburgh, Pennsylvania. (n.t. 1:135-136) He testified that he was the scrivener of the will and that it consisted of seven pages. (n.t. 1:136) Mr. DiSalle identified P-2 as the will he prepared for decedent, Paul Ciaffoni. (n.t. 1:136) He identified his signature as a subscribing witness and he identified the signature of the decedent. (n.t. 1:137) He stated that he was present when the decedent and the other two witnesses affixed their signatures. (n.t. 1:136-137) He went on to say that his secretary, Frances Gray, typed the will (n.t. 1:188), and that the will was fastened by three eyelets which he inserted. (n.t. 1:153) Mr. DiSalle also testified as to circumstances leading up to the execution of the will in Paul Ciaffoni's office. (n.t. 1:184) On cross-examination, Mr. DiSalle stated that decedent paid him for the preparation of the will.

Frances Gray testified that she had been Mr. DiSalle's secretary from 1959 until 1970. (n.t. 1:216) She stated that she typed the will in question. (n.t. 1:234) She testified that she was present when the will was signed by decedent and she did identify his signature. (n.t. 1:208-210) She identified her own signature on the will and stated she was present when Mr. DiSalle and Patricia McFarlane signed the will as witnesses. (n.t. 1:208) Mrs. Gray also testified that Elizabeth Cowden was present when the will was executed (n.t. 1:229) but that Mrs. Ciaffoni was not present. (n.t. 1:233)

Patricia J. McFarlane testified that she was employed in the Paul Ciaffoni family office since 1967. (n.t. 1:266) She stated that she was present when decedent executed P-2 and that Richard DiSalle and Frances Gray were also present at that time. (n.t.

1:263) She identified decedent's signature, her signature and the signatures of other two witnesses on the will. (n.t. 1:263) She stated the will was executed by decedent on May 10, 1968.

Then, Robert and Mr. Falkenhan jointly introduced the testimony of the following people in support of their claim that the will, as probated, was not the will which decedent signed: Robert Ciaffoni, Robert Ciaffoni, Jr., Concetta Ciaffoni, and Margaret Soviero. They also called Richard DiSalle, Frances Gray, and Elizabeth Ciaffoni Cowden as on cross-examination and, finally, they called John A. Shank, a typewriter expert.

Richard DiSalle was called by contestants as on cross-examination. He was examined extensively about his office practice in regard to the preparation and execution of wills. He was examined about an exhibit identified by Robert Ciaffoni as the W-44 series, which allegedly embodied 88 wills in which Richard DiSalle's office or his secretary had some input. (n.t. 2:130) He was confronted with a list containing 349 deeds having a "direct relationship to Richard DiSalle's office in some direct form." (n.t. 2:365) He was examined about the form and content of the other wills and deeds he prepared as compared to the form and content of the contested will. He was examined as to use of specific phrases and specific words in the various instruments.

He was examined *inter alia* in detail about the preparation of the contested will, the phraseology therein, the length of sentences and the method of describing bequests of real property. Mr. DiSalle was questioned about a prior will which he prepared for the decedent in 1967. Contestants have taken the position that the 1967 will, which they designate as W37.9, is

also fraudulent and was not prepared by Richard DiSalle. Mr. DiSalle was questioned about differences in style, language, sentence structure, and paragraph composition between the 1967 will and the contested will.

Mr. DiSalle also testified that he did prepare two wills for decedent. (n.t. 2:304) He prepared a will in 1967 which has been identified as W37.9 and the contested will and that he had proofread both wills. (n.t. 2:330) He also testified that most of the wills he prepared were only a page or a few pages long, (n.t. 2:330) and that before he drew this will for decedent, he had never drawn a will that exceeded three or four pages. (n.t. 2:377) He further stated that the usual practice in the office in regard to describing metes and bounds was to copy from the prior deed. (n.t. 2:369) Mr. DiSalle also admitted that his drafting of this will was "sloppy". (n.t. 4:260) When he was further examined on this point in regard to P-2 and a will prepared by Patrick Derrico in 1965, Mr. DiSalle pointed out that the 1965 will did not contain a residuary clause.

Frances M. Gray was also called on cross-examination by contestants. Mrs. Gray testified that she worked for Richard DiSalle as a secretary from March of 1959 until the first week of January 1970. (n.t. 3:14) She had no recollection of any other secretary working for Mr. DiSalle during this period of time except for a possible substitute when she was on vacation. (n.t. 3:14) She stated that during this period of time there was only one typewriter in the office. (n.t. 3:17) Mrs. Gray stated that she could not remember what the typewriter looked like since it has been 11 years since she last typed. (n.t. 3:46) She knew the typewriter in the office was an Underwood but she could not specifi-

cally say that the Underwood typewriter Robert had in court was in fact the office typewriter. (n.t. 3:257)

When Mrs. Gray was shown the 1967 will (W-37.9), she stated that she did not recall typing it. (n.t. 3:19) However, she did recognize her signature on page 7 of that will and from this she concluded that she did witness its execution. (3:24, 190) Mrs. Gray did not have any specific recollection of the circumstances of her affixing her signature as a witness to that will. (n.t. 3:25) She was shown other wills from the group in Exhibit C-3. Mrs. Gray testified that she witnessed them, she remembered the clients, but that she did not specifically remember typing them, but, since she was working in the office, she assumed that she typed them. (n.t. 3:58-61)

Mrs. Gray went on to testify that she did remember Mr. DiSalle getting Paul Ciaffoni as a client and doing much work for him. (n.t. 3:347) She also stated that she did remember the will in question. (n.t. 3:347) She could not specifically remember how each paragraph of P-2 came about since it was 15 years ago. (n.t. 3:202) However, her recollection was that in preparing the will, she copied some parts from the 1967 will, Mr. DiSalle had dictated a part of it to her, some of the paragraphs he did not dictate, he had made written changes on the 1967 will and he gave her a yellow sheet with some notes that he had made. (n.t. 3:193)

She was examined extensively on errors made in typing and spelling in the preparation of the will. She was examined as to the language used in each paragraph, the numbering of pages, and other differences between this will, the 1967 will and the other wills that she had typed for Mr. DiSalle. Mrs. Gray also testified

that there were very few wills that she prepared for Mr. DiSalle that were more than two pages, and the format in preparing a two page will is different from preparing a longer will. (n.t. 3-222) She explained why the word "and" was used in the 12th paragraph of the contested will instead of an ampersand as on prior occasions. (n.t. 3:331-332)

Elizabeth Ciaffoni Cowden was called by contestants as on cross-examination. She was examined extensively over a five day period by both Robert Ciaffoni and Claude Falkenhan, Esquire.

Elizabeth stated that she was employed by the Paul Ciaffoni office and fully described her duties therein. (n.t. 9:254-258) Elizabeth also stated that Patricia McFarlane was employed by her father from December 1967 through 1973 and was under her supervision but ultimately answerable to decedent. Sue Hartman was also employed by the Ciaffoni office in 1973. During the course of questioning, Robert admitted typing letters in the office. (n.t. 8:197-203) Elizabeth also testified that prior to her being in the office, Joseph Soviero ran the office and also typed when necessary. (n.t. 10:231)

Elizabeth was questioned about the use in the Ciaffoni office of certain numbers in the addresses of specific properties. She testified that the numbers designated the ward in which the property was located rather than the postal zone.

Elizabeth was examined in detail with regard to various tracts of land and the farms included therein. (n.t. 7:180-208; 10:96-151, 153-186) As a specific example of the questioning, Robert questioned Elizabeth with regard to an 1100 acre tract of land in Blaine and

Independence Townships and stated that she had added up the acreages of certain tracts of land incorrectly and this incorrect information is reflected in the contested will. (n.t. 7:218-219) Elizabeth denied this accusation emphatically and unequivocally. Elizabeth denied knowing exact acreage of various tracts of land. She identified the tracts by name. (n.t. 8:277-end, 9:3-10)

Elizabeth stated that her father owned a parcel of land known as the Reed Crow Hill Complex which was located partially in Donegal Township, partially in Blaine Township, and partially in Independence Township. (n.t. 7:104)

Elizabeth specifically and continuously denied ever having typed anything in the will. (n.t. 7:276; 8:142, 248; 10:175) She indicated on numerous occasions that she was not a typist and did not type except in a hunt and peck fashion. She further stated that she was given a typewriter during her senior year at college and that she brought the typewriter into the office for her father's use and that the typewriter was loaned to someone and never returned. (n.t. 8:165-166)

Elizabeth stated that although one letter apparently indicated that it was dictated by her, the date is inconsistent because she was in Arizona at that time. (n.t. 8:235)

With regard to decedent's will, Elizabeth stated that after it was executed, her father instructed her to put it in a safe place and not show it to anyone, so she put it in the files. (n.t. 7:133; 10:256)

In answer to her brother's questioning, Elizabeth stated that she does not recall witnessing the 1965

Derrico will and stated that she did not type the last page thereof. (n.t. 7:146-147) She stated that she had not typed any of the wills executed by her father. (n.t. 11:42-45) She was aware that her father had made three wills, the 1965 Derrico will, the will written by Richard DiSalle in 1967, and the 1968 probated will. (n.t. 7:87; 10:218)

When questioned about her relationship with Richard DiSalle, Elizabeth replied that he never visited her socially but, as her father's attorney, he may have dropped off papers. (n.t. 7:261-263)

Elizabeth stated that Margaret and her father did not get along with each other and that at one point when her father had instructed Richard DiSalle to disinherit Margaret, she had asked him not to do so. (n.t. 10:219)

Robert Ciaffoni then testified on direct examination on behalf of the contestants. He discussed three wills at length in his testimony: 1) a will dated December 22, 1965 and prepared by Patrick Derrico (W28.01); 2) a will dated November 29, 1967 witnessed by Mr. DiSalle and Mrs. Gray (C-16), and 3) a will dated May 10, 1968 and witnessed by Mr. DiSalle, Mrs. Gray and Ms. McFarlane (P-2).

Robert, *inter alia*, gave a detailed history of the acquisition of the various tracts of land owned by his father at the time of his death. He testified as to the acreage of each property. He identified each property by name and the names that the family allegedly used to identify the tracts. He identified the townships in which the various tracts were located and he testified as to which farms were included in particular tracts. He

then stated that the properties bequeathed in the contested will were not properly identified. As an example, he stated that Buffalo Creek was made up of the Nancy Smith Farm (sometimes referred to as Reed Crow Hill), the Wm. McK. Smith Farm and the Elizabeth Mahaffey Farm. (n.t. 15-27) He went on to say that the Wm. McK. Smith Farm is in Blaine Township but that most of the Elizabeth Mahaffey Farm is in Donegal Township, and that the decedent knew this. (n.t. 15-29) He admitted that the deed to the Elizabeth Mahaffey Farm indicated that it was located in Blaine Township but he stated that this was a mistake in the deed. (n.t. 15-29) He also stated that the tax bills for some of the properties had the properties located in the wrong township. (n.t. 15:75) He testified as to Exhibit C-65, which made reference to 428 acres of land leased from decedent in September of 1955 as being in Donegal Township but he stated that this must be an error because most of that particular land is in Blaine Township. (n.t. 15:103-104)

Robert then analyzed the contested will line by line. He reviewed all the alleged factual errors. He reviewed the alleged inconsistent use of language, e.g. the use of the words give and devise in some places and the use of the words give, devise and bequeath in other places. (n.t. 15:216) He described the inconsistent use of capital letters, mistakes in typing, missing commas, lack of verbal continuity, internal inconsistencies, and he applied "the doctrine of the last antecedent" (n.t. 5:238) to the contested will to illustrate its lack of clarity.

Robert then applied his analysis to the 1967 will as well as to the other wills and deeds prepared by Mr. DiSalle as evidence of the fact that the contested will was not prepared by Mr. DiSalle. He also brought to

the attention of the court that the second page of the contested will bore a different water mark than the other pages. Robert then testified as to "his compression theory." (n.t. 15:249) He testified as to his investigation of the "literary and typing style" of the DiSalle office.

Robert also testified at length as to the differences he perceived between the contested will and the 1967 will. He then concluded that neither will was prepared by the DiSalle office. (n.t. 15:273-275)

Robert testified about the internal practices of the Ciaffoni office, Elizabeth's typing ability, various documents either signed or allegedly typed by Elizabeth and his activities on behalf of his father with regard to his father's properties. He also testified that Elizabeth had misconceptions as to the acreage of various farms and tracts and their actual locations and that some of those misconceptions appear in some of the descriptions contained in the will. Robert also stated that his father often exaggerated his holdings to a great extent. (n.t. 18:78) However, his father did know the correct acreage and townships of his holdings. He reiterated his contention that Elizabeth removed certain pages of the will and substituted pages which she had prepared.

After completing his own testimony, Robert was questioned by Mr. Falkenhan as on direct examination. He testified as to his involvement with his father in the father's business. He stated that he never paid much attention to what his father said about the terms of his will because he was "acutely aware that it could be changed from morning to night...." (n.t. 19:134) His father stated that Mr. DiSalle had his will under bond. (n.t. 19:136) He also testified as to the office practices

instituted by Elizabeth when she came to work in their father's office. He testified that relations between his father and Elizabeth deteriorated in the fall of 1971. (n.t. 19:169) Robert stated that he always felt that his father trusted him. He also said that his father was wily and often got attorneys to work for nothing. (n.t. 19:175) Robert reiterated that his father never told him what he was to get in the will, and he never asked since he felt the will could always be changed tomorrow. (n.t. 19:198) He stated that it was a matter of family knowledge that Butch was to get Reed Farm (n.t. 19:212) and his father told him so on several occasions. (n. t. 19:222)

On cross-examination, Robert was questioned about his examination of Elizabeth and his testimony to the effect that the devise in paragraph Eleventh of the contested will of approximately 1100 acres of Independence Township was factually incorrect (n.t. 20:17) and that in fact there are only 806 acres. (n.t. 20:18) Robert did admit that Elizabeth knew that there were only 800 some acres in that parcel. (n.t. 20:19) When queried about his father's knowledge in regard to this parcel, he replied:

> ... he might have said one thousand acres there, he might have said he had fifteen hundred acres there. My father always projected, but at times, depending upon the circumstances, and what point he was trying to put across. (n.t. 20:18)

Robert then went on to say that his father would not exaggerate in such a fashion in a solemn document such as a will or a deed. However, he admitted that his father might exaggerate in such fashion even if he were sworn and testifying in a court of law. (n.t. 20:18-19)

Robert was specifically asked about litigation in which his father was questioned about his ownership of a farm in Independence Township. When asked about how many acres on this farm, decedent answered eleven hundred. (n.t. 20:22) Robert stated that this was a case of his father exaggerating. He stated that his father did not hesitate to "project". (n.t. 20:26) Robert also stated that he never had any specific talks with his father as to what his father was going to do with the Reed Farm after his death. (n.t. 20:92-93) He said his father simply made the statement that it would go to Butch. (n.t. 20:93)

Robert Ciaffoni, Jr., testified on behalf of the contestants. He is the son of Robert Ciaffoni and the grandson of decedent. He was born on July 5, 1955. (n.t. 12:13) He stated that beginning in 1966 or 1967 and continuing until 1973, he had the opportunity to stay at the home of his grandfather and to spend time with him. (n.t. 12:16-17) During this period, his grandfather discussed with him on many occasions his intentions in regard to his land and his properties. (n.t. 12:23) Robert, Jr., recalled that in 1966 or early 1967, his grandfather told him that he and his brother were to get Cross Creek and the A & P store in Washington, Pennsylvania, (n.t. 12:27) and that his father would run things. (n.t. 12:29) Robert, Jr., concluded from this statement that his father was to get a life estate and he and his brothers would inherit after his father. (n.t. 12:29) He stated that his grandfather also told him what his grandmother was to inherit (n.t. 12:28), as well as his female cousins (decedent's granddaughters) (n.t. 12:44), and that Margaret Soviero was to be disinherited. (n.t. 12:53) He further stated that his grandfather told him that his cousin Butch was to inherit the Reed Farm and the West Liberty A & P (n.t. 12:38) He said

his grandfather was always consistent in discussing his properties and who was to get them. He testified that the part he remembered the best was the part relating to his grandmother, himself, his two brothers, his father, the granddaughters of decedent and Margaret. (n.t. 12:52) These were the legacies and legatees his grandfather discussed most frequently. (n.t. 12:52)

Robert, Jr., also testified that his grandfather had a definite accent and, at times, he had trouble understanding him. (n.t. 12:34) He said that his grandfather sometimes talked about his will generally and sometimes specifically. (n.t. 12:34) He also stated that his grandfather's vision was not good. (n.t. 12:55)

During cross-examination, Robert, Jr., was asked about the will which is being contested. He stated that he only saw it one time, some time in 1968. (n.t. 12:62-68) He testified that he thought he read the paragraph dealing with the bequest to him and his family. (n.t. 12:140) He did not read any of the other bequests. (n.t. 12:140)

Robert, Jr., also stated that he renounced his inheritance under this will. (n.t. 12:122) He testified that he made his father aware of the fact that he was signing away a substantial inheritance and his father told him "your grandmother will take care of you." (n.t. 12:122-123) He also stated that it was his father who initiated the discussion in regard to him executing the renunciation. (n.t. 12:123)

Margaret Soviero was called as a witness for contestants. In response to a request for an offer of proof, Mr. Falkenhan stated that she was an expert in "informal analysis" and that based upon styles and

characteristics, she can determine the authorship of a particular writing.

Mrs. Soviero stated that she was a retired educator and had taught English off and on from 1962 to 1979. She had taught in Pennsylvania, New Jersey and Arizona, and she was a full time substitute teacher. (n.t. 13:31) She also taught in junior college and in a regular college. (n.t. 13:31).

She testified at great length about the ability of Elizabeth to type. She stated she had taught Elizabeth to type while Elizabeth lived with her. (n.t. 13:14-99). She testified about procedures in the Ciaffoni office while her husband worked there with Elizabeth and that Elizabeth worked there after her husband left the office in 1964. (n.t. 13:51-64) She testified about the typing Elizabeth did in the office.

Mrs. Soviero testified that Elizabeth had been a very good typist but about "two years later" a window fell on her right hand and after that point she made typing errors with that hand. (n.t. 13:167) Mrs. Soviero then stated that as a result of her years of teaching, she felt that she could identify a particular writer based upon their style, spelling and word usage. (n.t. 13:187-196)

She also testified about the incident in Arizona regarding the alleged 1970 will which was previously mentioned.

With respect to the will itself, Mrs. Soviero stated that in the will her father deeded the Herkey Knob Farm to her sister Lorrayne's son Thor, which was impossible because he had not purchased the Herkey

Knob Farm at this point and also because Thor had not yet been born. He was not born until July of 1968. This implied to Mrs. Soviero that Lorrayne was part of the conspiracy. (n.t. 13:205-207).

Margaret Soviero was also asked what she knew of Elizabeth Cowden's relationship with Richard DiSalle. (n.t. 13:108) She replied that on an occasion when she was shopping with her sister Virginia, in the spring of 1968, Virginia told her that Elizabeth was getting married. When she inquired who Elizabeth was to marry, Virginia told her it was an attorney in Washington County. She then referred to this person as "Richard the Lionhearted." (n.t. 13:110) When she asked Virginia what the prospective groom looked like, Virginia said, "He is a little fat Italian, boot high." (n.t. 13:111)

She also testified that her father was concerned about Elizabeth because at one time she was going with a married man. (n.t. 13:113) Her father was concerned because he did not want the family disgraced. (n.t. 13:113) She stated that she believed the person Virginia spoke about and the person who concerned her father was the same person. (n.t. 13:114) She came to this conclusion because at her father's funeral, she saw Elizabeth and Mr. DiSalle together under circumstances from which it appeared to her that they had a close relationship. (n.t. 13:114).

Mrs. Soviero further stated that she is an author and had received the Lady Bird Johnson Award for a book; she cannot remember the publisher. (n.t. 13:218-220). She currently is a law student at the "New College of Law" in San Francisco.

On cross-examination, Mrs. Soviero stated that her father made a number of promises which he did not keep and that it was his habit to do it all the time. "I'll give you this. I'll give you this. But when it came to the bottom line, she still had it." (n.t. 14:34)

Mrs. Soviero defined the word lie "to maintain a point of view, or to maintain a fact when the evidence shows otherwise." (n.t. 14:37) Mrs. Soviero further stated that disinheritance could be a form of child abuse according to her understanding of Pennsylvania law. (n.t. 14:66-67)

On cross-examination, Mrs. Soviero further stated unequivocally that "I did not know by any personal observation of the relationship between Elizabeth and Richard DiSalle." (n.t. 14:70)

Concetta Ciaffoni, widow and contestant, testified against probate of the will. She stated that she became aware of the fact that decedent had made a will in 1968 shortly after it had been made. (n.t. 5:8) She tried to get a copy of the will from decedent but she was not successful. (n.t. 5:6-8) Concetta admitted that she had never seen any other will made by her husband. (n.t. 14:169) She ultimately received a copy of the will from Richard DiSalle in the fall of 1972. (n.t. 5:9) However, after she received it, she never read it. (n.t. 5:9, 28). In fact, Concetta testified that she did not read the will until after her husband died. (n.t. 5:29)

She stated she became aware of certain provisions in the will in the spring of 1974. (n.t. 5:11) This occurred when she asked a friend and neighbor in Arizona, a Mr. Dobosh, to check the will. (n.t. 5:10, 11) After examining the will, Mr. Dobosh told her that

Elizabeth was getting most of the property, (n.t. 5:11) and that Margaret was being disinherited (n.t. 5:27). She went on to say that Mr. Dobosh did not read the will to her (n.t. 5:26) nor did he read it word for word. (n.t. 5:27) As a result of this information, she testified that she confronted decedent in August of 1974 and asked him if he knew that Elizabeth was getting the A & P on West Liberty and the Reed Farm with all the contents. (n.t. 5:12) She stated that he denied signing such a will. (n.t. 5:12) This was the only discussion she had with decedent in regard to his will. (n.t. 5:18) She went on to say that she was satisfied that her husband did not sign the will as he had told her so. (n.t. 5:33)

On cross-examination, Mrs. Ciaffoni stated that she wanted all her children equal and everything to be equal. (n.t. 5:49-50) Mrs. Ciaffoni also testified as to her recollection of Frances Gray coming to the farm for decedent to execute the will, the probate of this will, and several other issues. And, when she was recalled by contestants and asked if she recognized the will which was probated and is at issue, she answered, "Well, I haven't really read it but - ah--I--ah--don't understand very much about it." (n.t. 14:151)

John A. Shank, an associate professor in the Department of Business and Communications at Robert Morris College, was called by contestants as an expert in the field of typing analysis.

He testified *inter alia* that he examined 91 wills which fell into five categories: eight wills prepared by Richard DiSalle's office prior to Frances Gray's employment, 68 wills prepared in Richard DiSalle's office during Frances Gray's employment, the will dated November 29, 1967 and the will dated May 10, 1968 (P-

1 and P-2), one will prepared by Patrick Derrico for Paul Ciaffoni, and 12 wills prepared by Frances Gray for attorneys other than Richard DiSalle (n.t. 6:68).

Mr. Shank determined that the office of Richard DiSalle and Frances Gray produced wills with a definite style and identified 39 elements which comprised that style. (n.t. 6:72-78) These were then divided into seven categories. (n.t. 6:78). The witness stated that many of these elements were missing from P-2. The description of each element, and its presence or absence in P-2, is explained by the witness at volume 6 of the notes of testimony, pages 88-121, and is evidenced by C-9 and C-10. In Mr. Shank's opinion, P-2 is about 54% consistent with the 39 elements enumerated. (n.t. 6:139).

On cross-examination, the witness stated that he performed his analysis from copies of original documents (n.t. 6:226) and that he was given a sampling of wills to analyze by contestants. (n.t. 6:232) Further, in making his analysis, the fact that P-1 and P-2 were seven pages long (longer than any other wills he analyzed) was not taken into consideration since the witness did not analyze content. (n.t. 6:232-234)

On direct examination, Elizabeth testified that P-2 is entitled "Last Will and Testament", that its date of execution is May 10, 1968, that she did not write or type the document but rather it was drafted by Richard DiSalle. She stated the P-2 is the same document that her father executed on May 10, 1968, and that she has not altered it in any fashion. (n.t. 12:3-5)

Virginia Messa, a daughter, also testified on behalf of the proponents as a rebuttal witness. She specifically contradicted portions of the testimony of Margaret

Soviero. She stated she never went with Margaret to Saks in 1968; she never went with Margaret to buy a wedding gown for Elizabeth; she never told Margaret about the person that Elizabeth was supposed to marry and she never described anyone as Richard the Lion-hearted to Margaret. (n.t. 21:121)

She also testified that Elizabeth could not type. (n.t. 21:124) She further testified that in January of 1974 her father told her that there would be a lot of trouble when he died and to watch Bobbie and Maggie. (n.t. 21:126) On cross-examination, Virginia stated that her father told her that Margaret was being disinherited, that he was taking care of her (Virginia's) sons, and that Elizabeth would get a lot because she stayed with him and she was unmarried. (n.t. 21:147-148)

It is well settled that after proponents offer the testimony of the subscribing witnesses to prove the execution of the will, the burden of proof shifts to the contestants challenging the validity of that will to offer proof of the invalidity thereof. *Smith Estate*, 454 Pa. 534, 312 A.2d 35 (1974). When fraud is alleged, the evidence of the fraud which will vitiate a will may be of two types: fraud in the inducement, which voids the entire instrument, and fraud in the contents, which vitiates only those portions affected by the fraud. *Kane's Estate*, 312 Pa. 531, 168 At. 681 (1933).

Fraud may be thought of as the deceitful and intentional acts by some person, which acts are intended to and do produce a testamentary writing which would not represent the testator's desires in the absence of such fraud. 10 U. of Pitts. L.R. 602.

Contestants who rely on fraud or forgery have the

burden of proving the facts upon which the alleged fraud or forgery is based by clear and convincing evidence. *Kadilak Will*, 405 Pa. 238, 174 A.2d 870 (1961); *Elias Will*, 429 Pa. 314, 239 A.2d 393 (1968); *In Re Kirkander*, 326 Pa. Super 380, 474 A.2d 290 (1984).

Our Supreme Court has defined clear and convincing as follows:

> [T]he witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. . . . It is not necessary that the evidence be uncontradicted . . ., provided it "carries a clear conviction of the mind" . . . or carries "a clear conviction of its trust . . .."

In Re Estate of Fickert, 461 Pa. 653, 658, 337 A.2d 592, 594 (1975), citing *LaRocca Trust*, 411 Pa. 633, 640, 1982 A.2d 409, 413 (1963).

In regard to considering the testimony of witnesses, our Supreme Court has stated:

> It is an elementary principle that in considering the credibility of witnesses, their manner of testifying, their apparent candor, intelligence, personal interest and bias or lack of it, are to be considered in determining what weight shall be given to such testimony. (Citations omitted) In determining the weight to be attached to the testimony of a witness, it is proper to consider his appearance, general

> bearing, conduct on the stand, demeanor; manner of testifying, such as candor or frankness, or the clearness of his statements, and even the intonation of his voice. So the positiveness of the witness, as well as his uncertainty as to the facts as to which testimony is given, may be considered.

Gaston Estate, 361 Pa. 105, 112, 62 A.2d 904, 910 (1949)

Contestants have predetermined that P-2 is a fraud/forgery. They have endeavored to substantiate this premise with certain evidence, some of which is direct and some of which is circumstantial.

Contestants introduced testimony, *inter alia*, to the effect that decedent made statements to his grandson, Robert Ciaffoni, Jr., in regard to his intended disposition of the Reed Farm and West Liberty properties which are inconsistent with the probated will; that decedent told his wife that he had not executed a will devising those properties to Elizabeth; that decedent told Robert Ciaffoni of a different dispositive scheme than in P-2; that Elizabeth was devised those properties under P-2; that Elizabeth is a skilled typist; that P-2 is not consistent with the typing and grammatical style of the other wills produced in the DiSalle law office; and that the description of certain properties in the will and the use of certain language is consistent with knowledge and language peculiar to Elizabeth.

Contestants furthermore tried to create an inference that Elizabeth enjoyed an intimate relationship with Richard DiSalle. They ask the court to conclude that Richard DiSalle provided Elizabeth with the opportunity to alter the decedent's will. They also ask this court to conclude that Richard DiSalle, because of

his "relationship" with her, had a reason to substantiate and affirm a will which is not his work product. From this evidence, contestants conclude that they have amply demonstrated that P-2 is a forgery.

The trial court's responsibility is to view the evidence independently and impartially, free of any predisposition, to determine the facts and to determine the conclusions to be drawn from the credible evidence presented.

Robert Ciaffoni is clearly an interested party. His testimony is discussed herein at pages 30 through 34 and must be carefully considered. He has spent an incredible amount of time and effort in trying to invalidate the will. Robert testified at length about alleged factual errors found in the will, about the differences between the probated wills and other wills and deeds prepared by Richard DiSalle's office, about the misdescription of properties, about Elizabeth's typing abilities and knowledge and habits peculiar to her. He analyzed all this material and testified as to the conclusions he drew from it. He presented numerous charts and exhibits to support and demonstrate his conclusions and the reasons for them.

Concetta Ciaffoni's testimony has been set forth herein at pages 38 and 39. Her testimony was neither convincing nor persuasive. She demonstrated an inability to accurately recount, recollect, and remember relevant events. She appeared more concerned with mending the dissention between her children and keeping everything equal for them than with recounting the details of events in her life which have caused such disharmony among her children.

A significant element of her testimony was that in 1974 she asked the decedent if he had made a will leaving the Reed Farm and the West Liberty A & P to Elizabeth, and he said no.

However, in conjunction with this testimony, we must consider that Mrs. Ciaffoni stated that she received a copy of her husband's will in 1972 from Mr. DiSalle and that she never read it. She was informed by her friend in Arizona, who had examined the will, that Elizabeth was receiving substantial bequests in that will. And yet, after her husband denied making such a bequest, she still did not read what she had in her possession nor did she confront her husband with it. Instead, she stated, his answer satisfied her. Clearly, Mrs. Ciaffoni wanted to avoid a confrontation with her husband. She preferred to accept what he said rather than read the document in her possession.

Margaret Soviero also testified on behalf of contestants. Her testimony is noted at pages 35 and 38 of this opinion. She testified about her ability to determine who authored certain writings upon an analysis of the style and character of the writing and about Elizabeth's ability to type. In her testimony, she also implied that there was a "relationship" between Elizabeth and Richard DiSalle. However, on cross-examination, she stated that she did not know by any personal observation of any such relationship. She also has an interest in overturning this will since in item Ninth of the will, testator specifically stated that he intentionally was not making any bequest to Margaret.[1] Upon consideration

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[1]I note that there is a possibility that Margaret may share in the residue if Concetta does not exercise her power of appointment.

of the content of her testimony, her demeanor, and her manner of testifying, I find Margaret's testimony not credible and of no probative value in this matter.

The testimony of Robert Ciaffoni, Jr., has already been reviewed at pages 34 and 35 of this opinion. Therefore, I will not restate his testimony except to reiterate the following: Robert, Jr., testified that he remembered his grandfather telling him about the legacies relating to his grandmother, his immediate family, the decedent's granddaughter, and Margaret Soviero because these were the legacies his grandfather discussed most frequently. These legacies are, in fact, reflected in the probated will. The only discrepancy between the recollection of Robert, Jr., and the probated document involves the bequest of the Reed Farm and the West Liberty A & P to Elizabeth which, according to Robert, Jr., were to be given to "Butch". Robert, Jr., stated on cross-examination that when he saw a will some time in 1968, he thought he read only the part pertaining to his family's bequest. Robert, Jr., also has a significant interest in having this will set aside, since, at the urging of his father, he had "renounced his inheritance" under this will.

I find the testimony of Robert, Jr., of little relevance to the proceedings herein. Decedent may have told Robert, Jr., that cousin "Butch" was to inherit the Reed Farm and the West Liberty A & P. However, the decedent's statements to his wife, Robert, and Robert, Jr., are but one indicia of his intent and are not determinative as to the validity of decedent's will. As stated in *Buhan, Exr. et al v. Keslar, et al*, 328 Pa. 312, 319, 194 Atl. 917 (1937), "such declarations cannot be received for the purpose of establishing the substantive facts which they carry." See also *Herster v. Herster*, 122

Pa. 239, 16 At. 342 (1888), *Keen's Estate*, 299 Pa. 430, 149 At. 734 (1930).

Moreover, from the evidence presented about decedent, we have discerned a pattern in decedent's behavior that decedent was likely to say one thing and then do something inconsistent with his prior statement. He was also known to exaggerate and to make promises which he did not keep.

Mr. Shank, whose testimony is detailed herein at pages 39 and 40, also documented the differences in style between P-2 and the other wills prepared by Mr. DiSalle. He concluded that P-2 was 54% consistent with the 39 elements he found in other DiSalle wills. He did not consider the fact that P-2 was seven pages long and that the other DiSalle wills were shorter and simpler.

In juxtaposition to the contestants' evidence, the evidence presented by the proponents must also be scrutinized and considered. Richard DiSalle, Frances Gray and Patricia McFarlane each testified as to the authenticity of P-2.

Richard DiSalle's testimony was clear and credible. It is capsulized herein at pages 23 to 26. Mr. DiSalle identified P-2 as the will which he drafted for the decedent. He stated that he was not only the scrivener of P-2 but also the scrivener of a will which he prepared for the decedent in 1967. He explained the discrepancies between P-2 and the other wills which he had drafted by the fact that before he had drafted the wills for Paul Ciaffoni, he had never drawn a will that exceeded three or four pages. Mr. DiSalle furthermore admitted that his draftsmanship of P-2 was sloppy. I find his explanations credible. The contestants have

stated again and again that because Mr. DiSalle is the scrivener of the will, he is a party in interest and that his testimony is, therefore, in some way tainted and less than worthy of belief. Research has indicated the case of *Masciantonio Will*, 392 Pa. 362, 380, 141 A.2d 362,378 (1958), which, in a footnote at page 380 (note 17), stated: "Where the attorney who draws the will participates in the trial of a contest upon the instrument, his testimony cannot be considered disinterested."

I find the case inapposite. In *Masciantonio*, supra, the ultimate issue was the testamentary capacity of the testator. In a will contest involving lack of capacity, it may be logical to contend that the scrivener, who is also a witness, has an interest in justifying and defending his own actions and his work product. However, this is not our case. Here, contestants aver that the will is not the work product of this attorney but of someone else. It would behoove the attorney to deny this as his work product, if, in fact, it were not prepared by him. To do otherwise would actively involve him in a fraud.

In addition, in *Masciantonio*, supra, the Supreme Court noted that the attorney was the scrivener, witness and represented the proponents in the trial of the will contest until his formal withdrawal as counsel when he took the stand. The Court also noted that another member of the firm continued to represent proponents even at the argument before the Supreme Court. Clearly, these actions had an influence on the statement by the Court in regard to whether he was a disinterested witness. In the instant case, there has been no credible evidence to provide any motive which would induce Mr. DiSalle to commit perjury by identifying the probated will as his work product, if, in fact, it were not.

The testimony of Frances Gray was also clear and credible. It was not shaken by the contestants. Her testimony stated at pages 24, 26 and 27, herein, corroborated that of Mr. DiSalle. She identified P-2 as the will she typed and witnessed. Contestants examined her extensively in regard to many details. Her answers were candid and responsive, especially when we consider that she was being examined about matters that occurred approximately 15 years ago. Contestants tried to impute to her a bias in that she was defending the alleged work product of a long time employer. There was no evidence of any such bias and I do not find any bias.

Likewise, Patricia McFarlane's testimony that she was present and witnessed the decedent's signing of P-2 is credible.

Elizabeth Cowden's testimony is recapitulated at pages 28 through 30, and page 40, of this opinion. She was examined by the contestants over a five day period. She explained that everyone in the office was answerable to the decedent and that she worked for the decedent and enjoyed a close working relationship with him as the office manager for six years. She did some typing in the office. She saw her father's will but specifically denied typing any portion thereof. She denied having anything but a business relationship with Richard DiSalle.

During the course of Elizabeth's cross-examination, there was much bickering between Robert and Elizabeth. The type of questions posed by Robert, as well as the nature and content of Elizabeth's responses, indicated that animosity, obviously, exists between these siblings. However, in the consideration of Elizabeth's

demeanor, her manner of testifying and the content of her testimony, I find her testimony credible and consistent.

Despite the myriad of issues raised by the contestants herein, when pared down to essentials, this case is a will contest. In a will contest, after proof of execution of the contested document, the party seeking to overturn the will must prove by evidence which is clear and convincing that the will is a fraud/forgery. *Kadilak Will*, supra.

When I review the pertinent evidence presented, I have before me some evidence of the fact that P-2 is different stylistically then other wills which were drawn by Richard DiSalle, some evidence that Elizabeth knew how to type and evidence that on at least two occasions, the decedent made statements to the effect that he did not intend to leave the Reed Farm and the West Liberty A & P to Elizabeth. There is not one scintilla of evidence, credible or otherwise, tending to show that Elizabeth was engaged in any sort of intimate relationship with Richard DiSalle.

On the other hand, the reports of the experts who analyzed the typewriting in the will indicated that all pages of the will (P-2) were typed by the same typewriter. (This evidence was introduced without objection.) There was evidence that the typewriter in Mr. DiSalle's office was used to type the will. There is no evidence as to how or when or by whom this typewriter was used by anyone not affiliated with Mr. DiSalle's office. There is credible evidence identifying P-2 as the document executed by decedent on May 10, 1968 and witnessed by Richard DiSalle, Patricia McFarlane and Frances Gray. Based upon the evidence presented, I find as a fact that

the will which has been probated was prepared by Richard DiSalle. I find as a fact that it was typed by Frances Gray. I find as a fact that it was executed by Paul Ciaffoni and witnessed by Richard DiSalle, Frances Gray and Patricia McFarlane.

The case *sub judice* is almost identical to the case of *Rosenthal's Estate*, 339 Pa. 488, 15 A.2d 370, (1940). In that case, testatrix had executed a will and two codicils. It was only the second codicil which was at issue. Contestant charged that the first page of this two page codicil had been fraudulently substituted by one Frank Behring who, thus, substantially increased his legacy. Mr. Behring was a friend and an employee of testatrix.

Contestant alleged in her petition that:

> Your petitioner believes and expects to be able to prove that from the suspicious circumstances surrounding said codicil that the unsigned sheet was not present nor in the contemplation of the decedent at the time of signing and witnessing of the single sheet constituting her codicil; . . . Frank Behring (beneficiary herein) prepared said unsigned sheet and fraudulently made it part of the Will of the decedent as an apparent codicil thereto.

The codicil in question consisted of two sheets of paper that were not firmly fastened together. It was typewritten and contained the undisputed signature of testatrix on the second page. Proponents had offered the testimony of experts on the operation of typewriters to the effect that the two pages and the carbon copy thereof had been typed on the same typewriter by the same person.

Behring was called as on cross-examination and testified that he had typed the codicil in question at the direction of testatrix. He stated that testatrix had her will and read the paragraphs she wished changed. She dictated the modifications she desired and he typed them as she read and dictated to him. He admitted that the first sentence on the second page, indicating that this was a continuation of a codicil, was written by him without the dictation of testatrix.

A Mr. Fitzpatrick, who witnessed the codicil, testified that he was an employee of the Rosenthal Company. He stated he saw testatrix sign the codicil and identified her signature. He also testified that there was more than one sheet of paper but that he did not see enough of the instrument to describe it in greater detail.

Contestant also alleged that the circumstances in which codicil was found were suspicious. It was not found immediately after death but was located several weeks later by Behring in a letter file in testatrix' house.

The court declined to overturn the hearing judge's decision, despite the suspicious circumstances in the face of proponents credible evidence, regarding the preparation and execution of the codicil.

The court quoted the hearing judge and stated, at page 496: "Doubtless there was ample opportunity for perpetration of fraud by Frank D. Behring, and there may be ground for considerable conjecture and suspicion, but . . . opportunity is not evidence, and conjecture and suspicion do not take the place of testimony." It went on to say at page 498: "Mere opportunity to commit a fraud, is, of itself, not sufficient to prove that

Behring committed the fraud."

And so in the instant case, the testimony presented by contestants may be said to raise an aura of suspicious circumstances. Contestants' contentions and arguments are based principally upon surmise, conjecture and conclusions. The trial court is not, however, bound to reach the same conclusions as contestants. As has been stated often enough to be axiomatic, mere suspicion and conjecture do not take the place of evidence. *Rosenthal Estate*, supra; see also, *Elias Will*, supra, *In Re Kirkander*, supra, *Pochron Will*, 367 Pa. 306, 80 A.2d 794 (1951).

Applying the law to the facts and considering all of the evidence presented, I conclude that the contestant have not presented that quality of evidence which would mandate setting aside P-2. They have failed to meet their burden of proof and, accordingly, the appeal is dismissed.

After the trial in this matter was concluded, contestant Robert Ciaffoni, on numerous occasions, has mailed various documents and exhibits to the court and has requested that they be considered and admitted into evidence. Proponents have objected to these actions and requests.

Litigants cannot be permitted to keep the record open indefinitely by submitting alleged evidence by mail, *ex parte*. Nor should the court convene each time a party decides that something else should be introduced into the record after the completion of the trial.

Contestants aver that the additional wills prepared by Mr. DiSalle should be admitted since they were not

available at the time of the trial because they had not been probated at the time. This argument is without merit. A great number of wills have already been admitted and this evidence would only be cumulative. Further, in all probability, there will be other wills prepared by Mr. DiSalle, which will be probated next month, next year and, thus, the record can never close.

I have, therefore, not considered these documents or exhibits in this opinion, nor have they been admitted to the record. The request for their admission into evidence on the record is denied.

There is one more issue to be determined. At the conclusion of the trial, it was obviously necessary to have the notes of testimony transcribed so that the parties could prepare briefs and the court its opinion. The cost of the transcript was set at the prevailing per page rate in Washington County.

However, neither contestants nor proponents ordered the transcription of the notes. Instead, contestants ordered only a "copy" of the notes and proponents followed suit. As a result, it was necessary to enter a decree on October 18, 1983, directing the notes to be transcribed, the expense of the original transcript to be borne by the estate of Paul Ciaffoni, with final allocation of this cost to abide the disposition of the matter.

It would be unconscionable to impose the cost of the transcript of this litigation involving an estate with several million dollars upon the citizens of the county. Further, the estate, *per se*, was not a party to this litigation nor did the estate participate in the litigation. This is a will contest. Such a contest is between the testamentary beneficiaries and the heirs or next of kin.

Faust Estate, 364 Pa. 529, 73 A.2d 369 (1950); see also *Bennett Estate*, 366 Pa. 232, 77 A.2d 607 (1951), *Office of Disciplinary Counsel v. Walker*, 469 Pa. 432, 366 A.2d 563 (1976).

Thus, considering the equities of the situation, the estate should not bear the cost of the original transcript; the cost should be borne equally between the contestants, Robert Ciaffoni and Concetta Ciaffoni, and the proponents of the will. Accordingly, I direct that the contestants and proponents each repay to the estate one-half of the money the estate paid for the transcription of the original notes of testimony.

/s/ Pawelec
Edmund S. Pawelec, J.
Specially Presiding

COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE:	:	
Estate of Paul Ciaffoni,	:	**No. 63-74-942**
Deceased	:	

DECREE

Robert J. Ciaffoni, pro se, has filed a petition entitled "Second Motion for a New Trial, Nunc Pro Tunc." A review of this petition makes clear that this is simply an attempt to revisit and relitigate the issues that were previously determined, after extensive hearings, by this court in a Decree and Opinion dated June 22, 1987. This Decree was affirmed by a court en banc, and by the Superior Court of Pennsylvania. The Supreme Court of Pennsylvania denied allocatur.

Accordingly, this **12th** day of JANUARY, 1993, the petition entitled "Second Motion for a New Trial, Nunc Pro Tunc" is dismissed.

/s/ Edmund S. Pawelec J.
Edmund S. Pawelec,
Specially Presiding

Robert J. Ciaffoni,
Petitioner

Richard A. Sprague, Esquire
Geoffrey R. Johnson, Esquire
for Respondent

IN THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

IN RE:	:	
Estate of Paul Ciaffoni	:	
Deceased	:	
	:	
Robert J. Ciaffoni	:	**No. 0278**
Appellant	:	**Pittsburgh 1993**
	:	
Elizabeth J. Cowden	:	
Appellee	:	

ORDER

AND NOW, to-wit, this 1st day of December, 1993, upon consideration of the Application to Quash Appeal and the Reply to Application to Quash Appeal which have been filed in the above-captioned matter, the appeal is hereby QUASHED.

PER CURIAM

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE:	:	
Estate of Paul Ciaffoni	:	**No. 98 Western**
Deceased	:	**District Allocatur**
	:	**Docket 1994**
PETITION OF:	:	**Application for**
Robert J. Ciaffoni	:	**Reconsideration**

ORDER

PER CURIAM

AND NOW, this 18th day of August, 1994, the Application for Reconsideration is hereby denied.

Mr. Justice Flaherty did not participate in the consideration or decision of this matter.

Mr. Justice Montemuro is sitting by designation as Senior Justice pursuant to Judicial Assignment Docket No. 94 R1801, due to the unavailability of Mr. Justice Larsen, see No. 127 Judicial Administration Docket No. 1, filed October 28, 1993.

A True Copy Irma T. Gardner
as of: **August 18, 1994**
Test: **Irma T. Gardner**
Deputy Prothonotary,
Supreme Court of Pennsylvania

IN THE SUPERIOR COURT OF PENNSYLVANIA

IN RE:	:	
Estate of Paul Ciaffoni,	:	
Deceased	:	
	:	**No. 0239**
v.	:	**Pittsburgh 1992**
	:	
Appeal of	:	
Robert J. Ciaffoni	:	

APPLICATION TO QUASH APPEAL

Petitioner, Elizabeth Cowden, trustee under the will of Paul Ciaffoni, deceased, by and through undersigned counsel, hereby moves this Honorable Court for an Order quashing this appeal, and further awarding costs, including attorneys fees and expenses to petitioner. In support of this application, the following is averred:

1. Petitioner is Elizabeth Cowden, trustee under the will of Paul Ciaffoni, the appellee in the above-captioned appeal.

2. Appellant, Robert J. Ciaffoni, has taken this appeal from the Order of the Court of Common Pleas of Washington County, per the Honorable Edmund S. Pawelec, Specially Presiding, dated January 12, 1993, which Order states:

> Robert J. Ciaffoni, pro se, has filed a petition entitled "Second Motion for a New trial, Nunc Pro

Tunc." A review of the petition makes clear that this is simply an attempt to revisit and relitigate the issues that were previously determined, after extensive hearings, by this court in a Decree and Opinion dated June 22, 1987. This Decree was affirmed by the court en banc, and by the Superior Court of Pennsylvania.[1] The Supreme Court of Pennsylvania denied allocatur.[2]

A copy of the Decree of Judge Pawelec, dated January 12, 1993, is appended hereto as Exhibit "A."

3. Judge Pawelec's Order is not a final order and is therefore not appealable.

4. A final order was entered in this litigation on December 28, 1989 when the Supreme Court denied Robert J. Ciaffoni's petition for allowance of appeal from this Court's affirmance of the trial court's Decree and Opinion, dated June 22, 1987.

5. Robert J. Ciaffoni's appeal is merely another improper attempt to relitigate issues that have already been finally decided. Thus, this appeal must be quashed.

WHEREFORE, petitioner, Elizabeth Cowden, trustee under the will of Paul Ciaffoni, deceased, requests that this Court enter an Order quashing the Appeal of Robert J. Ciaffoni.

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[1]Estate of Ciaffoni, No. 393 Pittsburgh 1988.

[2]Estate of Ciaffoni, No. 381 W.D. Alloc. Dkt. 1989.

SPRAGUE & SPRAGUE

By: **/s/ Geoffrey R. Johnson**

RICHARD A. SPRAGUE
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GEOFFREY R. JOHNSON
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Attorneys for Petitioner

Dated: March 2, 1993

[Petitioner's Note: See D1 herein for unrequited requests for "explanations and corrections" to this appeal.]

IN THE SUPERIOR COURT OF PENNSYLVANIA

IN RE:	)	
	)	
Estate of Paul Ciaffoni,	)	
Deceased	)	
	)	
Appeal of	)	**No. 278 PGH 93**
Robert J. Ciaffoni	)	
	)	
Lower Court Case	)	
No. 63-74-942	)	

REPLY TO "APPLICATION TO QUASH APPEAL"

NOW THIS 21st day of March 1993, comes Robert J. Ciaffoni, pro se, appellant-contestant herein, and replies to appellee-proponent Elizabeth C. Cowden's "Application to Quash Appeal" of appellant-contestant filed on 3 February 1993. The said two, unnumbered pages of said application (erroneously designated "No. 0239 Pittsburgh 1992") are dated 2 March 1993, with a cover letter dated 3 March 1993, postmarked Philadelphia, 8 March 1993, and delivered on 10 March 1993. The first paragraph of Judge Pawelec's cited two-paragraph order ends the initial page of Cowden's application, and the second paragraph does not appear on the second page. Inasmuch as the two pages are unnumbered and without sentence continuity between them, it

becomes a question of a possible missing, intervening page. Further, contrary to instructions, no copy of the said order was "appended...as Exhibit 'A'." Explanations and corrections by the appellee-proponent are in order.

For the following substantial reasons, the application of appellee-proponent Cowden is herewith requested to be denied:

1. The "Second Motion for New Trial, Nunc Pro Tunc," filed on 18 November 1992, is the second of two collateral, companion proceedings filed by the undersigned. The "[First] Motion for New Trial, Nunc Pro Tunc" was filed on 3 September 1990, and acknowledged as received by Judge Pawelec on Page 3 in an open court transcription on 6 September 1990. To date that first motion has been otherwise ignored by Judge Pawelec.

2. The propriety of the two motions and that of the ensuing 3 February 1993 appeal under 278 PGH 93, are explained in the 11-page, 9 March 1993 "Civil Docketing Statement" filed under 278 PGH 93. Said statement is attached as EXHIBIT ONE [D7], less certain of its designated attachments, which omitted attachments and other referenced items are incorporated herewith by reference thereto.

3. Further demonstrating the utter lack of virtue and the current, proven absurdity of the position of the three principle advocates (Richard DiSalle, Elizabeth C. Cowden and Frances M. Gray) of the pair of questioned wills, is the 2 April 1985 (beginning at 3:25 P.M.) testimonial statements by Cowden's long time (since

1977) Philadelphia attorney, Richard A. Sprague. See attached EXHIBIT TWO [D44], being 3 preface pages and pages 239-259 of **Post-Gazette** (R.383a)). Sprague witnessed in behalf of DiSalle in **Post-Gazette** (see EXHIBIT ONE, page 2, item 2 (R.353a)). In referencing the three university level observers (EXHIBIT ONE, page 3, item 2d (R.354)a; and EXHIBIT TWO, pages 241 and 242 (R.388a)) and their contestant-endorsing conclusions predicated on "style" (EXHIBIT TWO, pages 244 (R.391a) and 257 (R.404a)), Sprague incongruently describes the currently codified comparative stylistic and gramformprints conclusions of the three referenced observers as "illogical" and "logically did not follow" (EXHIBIT TWO, pages 245 (R.392a) and 256 (R.404a); and "preposterous" (EXHIBIT TWO, pages 245 (R.392a), 246 (R.393a), 256 (R.403a) and 257 (R.404a)).

4. Sprague's testimony in item 3 above, specifically enlarges upon the incongruity of that of DiSalle and Ordway Hilton as referenced in **Post-Gazette** (EXHIBIT ONE, pages 2 (R.353a) to 4, item 2. In elucidating that incongruity, the complementary techniques of comparative stylistics and gramformprints are treated in detail in appellant-contestant's abstract of his 82-page manuscript referenced in EXHIBIT ONE, page 7, item 6(2) (R.358a). A 2-page overview of that 82-page manuscript is EXHIBIT THREE [D71] (R.407-408a) herein.

5. As with item 4, above, Sprague's testimony enlarges upon Judge Pawelec's incongruous dependence on DiSalle's "I was sloppy" and like dependence on that trial court's "suspicion and conjecture" descriptors, referencing the tenets of comparative stylistics and gramformprints, as commented upon in EXHIBIT ONE,

pages 4 to 7, Item G, "Brief description of nature of action and result below" (R.355a).

6. In the same vein as items 3, 4 and 5 above, consider Sprague's testimony of 2 April 1985, EXHIBIT TWO (R.383a), in context with his following illustrative, earlier pleadings emanating from 63-74-942, referencing the same subject matter:

> [18 December 1979, at page 11 of the 41-page brief to the Supreme Court of Pennsylvania at No. 121 March Term, 1979] The most important reason for excluding proffered evidence about the linguistic or typing style [currently codified under comparative stylistics and gramformprints] of the decedent's Will is that it is derived from an earlier will prepared by another attorney....
>
> [at page 18 of the same pleading] A major fact which completely negates the value of linguistic analysis [currently codified under comparative stylistics and gramformprints] in this case is the testimony of Judge DiSalle that he based this will [dated 29 November 1967], which was itself based on another attorney's earlier will for the decedent [dated 22 December 1965].

Sprague speaks in behalf of the three principle advocates of the pair of questioned wills in his ongoing, but futile attempts to explain away (1) the current, consummate obviousness of the absence of Gray as the typist of the said pair of wills, (2) the like-expressed absence of the DiSalle-Gray combined work product, (3) the like-expressed absence of the testamentary intent of

alleged testator Paul Ciaffoni, and (4) the presence of appellee-proponent Cowden as the like-expressed, supplanting party in each of the first three instances.

7. As to "fraud" versus "finality," and the appellee-proponent's claim "final order" of the Supreme Court of Pennsylvania of 28 December 1989 (signatory page, item 4, 2 March 1993, "Application to Quash" in 278 PGH 93), see attached EXHIBITS ONE (R.349a) and TWO (R.383a). Said EXHIBITS ONE and TWO, in combination with the following citations of the two highest pertinent courts in the land, speak loudly and clearly in demanding the denial of Cowden's application, however the status of Judge Pawelec's 12 January 1993 order may be interpreted by this Court:

a. *West Homestead Boro v. Erbeck*, 230 Pa. 316, 318 (1911):

> The gist of its complaint is this fraud, and in the face of such a charge, if made and sustained, even in a collateral proceeding, neither record, award, judgment nor decree will furnish shelter to the wrongdoer: *Mitchell v. Kintzer*, 5 Pa. 216 [1847]; *Phelps et al. v. Benson*, 161 Pa. 418 [1894].

b. *United States v. Ohio Power Co.*, 77 S. Ct. 652 (second paragraph under "Opinion of the Court") (1957):

> We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules. This policy finds expression in the manner in which we have exercised our power over

> our own judgments, both in civil and criminal cases. [Citations omitted; cited by the Supreme Court of Pennsylvania in their unanimous and unprecedented reversal as expressed in the *Estate of Paul Ciaffoni*, 498 Pa. 267, 446 A.2d 225 (20 May 1982), 36 ALR4th 595, certiorari denied *Cowden v. Ciaffoni*, 103 S.Ct.447 (29 November 1982).]

For all of the reasons stated, this Honorable Court is requested to deny the obviously incongruent request of the appellee-proponent Cowden, which request is designed wholly to thwart the interests of justice.

Respectfully submitted,

/s/ Robert J. Ciaffoni

Robert J. Ciaffoni, pro se
Comparative Stylist
311 Crawford Street
Canonsburg, PA 15319
Phone: 412-745-3270

21 March 1993

EXHIBIT ONE, 21 MARCH 1993

SUPERIOR COURT OF PENNSYLVANIA
CIVIL DOCKETING STATEMENT

PURSUANT TO PA, R.A.P. 3517, YOU MUST COMPLETE AND RETURN TOP THREE COPIES OF THIS FORM TO THE PROTHONOTARY OF THE SUPERIOR COURT NO LATER THAN *3-8-93*.

Case Caption: *In Re: Estate Of Paul Ciaffoni, deceased*
Superior Court Docket No: *278 PGH 93* County *Washington*

Party or Parties Filing Appeal: *Robert J. Ciaffoni, Son of Paul Ciaffoni*

A. Timeliness of Appeal

(1) Date of Judgment or order appealed from: *12 January 1993*

(2) Date notice of appeal filed: *03 February 1993*

(3) Was reconsideration requested or granted in the lower court: *No*

B. Appeal From Trial Court (Finality)

(1) Attach copies of the trial court's judgment, order or decree appealed from and a copy of the trial court docket.

(2) Is the order appealed from a final, appealable order? (see e.g., Pa. R.A.P. 301, 341) *Yes*

(3) If the order is not a final order: *N/A*
(a) is the order appealable as of right under Pa. R.A.P. 3117 (specify which subsection)

(b) was permission to appeal granted pursuant to:

(i) Pa. R.A.P. 13117 ___ Misc. Dkt. No. _____

(ii) Chapter 15, Pa. R.A.P.? ___ Misc. Dkt. No. _____

(4) How have issues been preserved? (e.g., timely exceptions, post-trial motions, motion to remove non-suit, petition to strike/open) (include date of filing). *Timely Exceptions: First Motion 03 SEP 90, Second Motion 18 NOV 92*

C. Nature of Disposition Below: (If Domestic Relations matter, proceed directly to Section E)

( ) Judgment after bench trial
( ) Judgment after jury verdict
( ) Summary Judgment
( ) Judgment on the Pleedings
( ) Decree _____
( ) Default Judgment
( ) Grant/Denial of Injunction
( ) Grant/Denial of Declaratory Relief
( ) Dismissal:

( ) Lack of Jurisdiction
( ) Failure to State a Claim
( ) Failure to Prosecute
( ) Other

(x) Other disposition (Specify) *First Motion-Ignored, Second Motion -- Dismissed*

D. Nature of Relief Sought Below:

( ) Damages: amount sought: $_____ amount granted $_____
( ) Attorney's fees: amount sought: $ _____ amount granted: $_____
(x) Other (specify) *New Trial*

E. Domestic Relations -- Type of Case: (Check as many as apply) *N/A*

( ) Custody/Visitation
( ) Habeas Corpus
( ) Adoption Act (e.g., termination of parental rights)
( ) Juvenile Act (dependency proceeding)
( ) Child Support
( ) Spousal Support
( ) Paternity
( ) Protection From Abuse Act
( ) Other (specify) _____

Divorce: Check those which apply

( ) Decree
( ) Alimony pendente llte
( ) Counsel Fees

( ) Alimony
( ) Equitable Distribution
( ) Special Relief
( ) Other (specify) _____

If this appeal involves the Divorce Code of 1980, was the divorce bifurcated? (Give date and, if applicable, attach lower court's statement of reasons permitting the bifurcation).

F. Related cases: List all related cases pending in any court (e.g., co-defendants, cross appeals, cross claims, counterclaims, bankruptcy proceedings) *See separate pages attached*

IF NECESSARY ATTACH PAGES FOR COMPLETION OF G. AND H.

G. Brief description of nature of action and result below:

See separate pages attached

H. Issues to be raised on appeal:
See separate pages attached

Signature: /s/ ***Robert J. Ciaffoni*** Date: **09 March 1993**

COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE: :
ESTATE OF PAUL CIAFFONI : **NO. 63-74-942**
DECEASED :

DECREE

Robert J. Ciaffoni, pro se, has filed a petition entitled "Second Motion for a New Trial, Nunc Pro Tunc." A review of this petition makes clear that this is simply an attempt to revisit and relitigate the issues that were previously determined, after extensive hearings, by this court in a Decree and Option dated June 22, 1987. This Decree was affirmed by a court en banc, and by the Superior Court of Pennsylvania. The Supreme Court of Pennsylvania denied allocatur.

Accordingly, this *12th* day of JANUARY, 1993, the petition entitled "Second Motion for a New Trial, Nunc Pro Tunc" is dismissed.

/s/ Edmund S. Pawelec J.
Edmund S. Pawelec,
Specially Presiding

Robert J. Ciaffoni,
Petitioner

Richard A. Sprague, Esquire
Geoffrey R. Johnson, Esquire
for Respondent

63-74-0942 Continued from Page 264 Block 8

1 Ciaffoni, Paul Cecil Township
Date of Death [23 Sep 1974]

PROCEEDING	DKT.	Vol.	Page No.	Year
Oral argument of 16 June 1992, Pittsburgh Answer to Appellee's 2 July 1992 "Motion to strike appellant's counter-answer..." dated 28 June 1992	7-8-92	OC	154A	1C
Motion to strike appellant's counter-answer to appellee's 23 June 1992 answer to "Motion to recuse a request for reargument" dated 18 June 1992	7-8-92	OC	154A	1D
Second Motion for New Trial Nunc Pro Tunc	11-20-92	OC	154A	1E
Corrections to Second Motion for New Trial, Nunc Pro Tunc 11-20-92	OC	154A	1F	
Corrections to 21-Page, second motion for New Trial, nunc pro tunc Eight omitted pages of Exhibit Six (3) page 10, Item VI 12-1-92	OC	154A	1G	
Application to Quash, or in the alternative to deny, second motion for new trial, nunc pro tunc	12-28-92	OC	154A	1-H

Civil Docketing Statement Addend
Superior Court of Pennsylvania
Docket No. 278 PGH 93
8 March 1993

Item F. Related Cases:

1. *Ciaffoni v. Supreme Court of Pennsylvania, Richard DiSalle, Elizabeth Cowden et al*, 550 F. Supp. 1246 (15 November 1982), not pending per se, but in response to the denial of due process charges filed on 30 April 1982, by the contestant-appellant herein, et al, the following two comments by the U.S. District Judge Donald E. Ziegler are noteworthy: (1) "the truth seldom catcheth the lie" (id. 1248), and (2) "not ripe for consideration by a federal court" (id. 1250). Noteworthy also, is the unprecedented 20 May 1992, reversing order (498 Pa. 267), with rationale, by the unanimous Pennsylvania Supreme Court of its "final" 30 April 1980 split order (491 Pa. 46) (sans rationale except for the lone dissent of Justice Samuel J. Roberts with rationale), upholding the incongruous denial of admission and application of "forty some" DiSalle office will exemplars, by the Earl S. Keim Trial Court (*Ciaffoni's Estate*, 60 Washington County Reports 88 (27 August 1979)), of that which has become to be known as comparative stylistic evidence.

Revised status premised on: (1) the currently and widely acknowledged rationale of "comparative stylistics" (BLACK'S LAW DICTIONARY, 6th, 1990 Edition) and that of its complements, "gramformprints" (*Pittsburgh Legal Journal*, "Bar Briefs," 26 April 1991), and (2) recently presented and exponentially enlarged documen-

tary and authenticated evidence; that is, 30 DiSalle office will exemplars, beyond the 96 will and 349 deed exemplars presented to the Pawelec Court prior to its now obviously unsound and incongruous order of 22 June 1987.

The present status of rationale and evidence clearly establishes that (1) the truth has caught the lie, and (2) the charges are ripe for consideration by an unbiased court. The issues, like those presented to the Pawelec Trial Court at 63-74-942 on 18 November 1992, focus on the physically demonstrable certainty that longtime (1955-1970) sole practitioner DiSalle and his long-time (1959-1970), secretary-typist, girl-Friday, Frances M. Gray, and the Ciaffoni Family bookkeeper (beginning in 1964), Elizabeth C. Cowden, conspiratorially perjured themselves as to the determinant issues of the testamentary and physical origins of the pair of proffered, 7-page, questioned companion wills (bearing execution dates of 29 November 1967, "the '67 will", and 10 May 1968, "the '68 will") under the seventh-page-restricted, subscribing, putative signature of Paul Ciaffoni, and that of the attesting, putative signatures of DiSalle and Gray. The said '67 and '68 wills were typed with the uniquely appointed, longtime (1964-1970) DiSalle office, Underwood Forum electric typewriter, serial number E16-9352719.

2. *DiSalle v. Pittsburgh Post-Gazette*, 367 September Term 1979 A.D., Washington County, Civil Division. Though this is not a pending case, per se, it springs from the same source as the case at bar. Testimonies given in *Post-Gazette*, by various witnesses, illustratively DiSalle and Ordway Hilton (the expert relied upon by

the advocates of the pair of questioned wills) are pertinent to the case at bar because of their incongruity and contradictory nature:

a. Beginning at the bottom of page 102 of his 21 April 1983 deposition, DiSalle enlarges upon his former, incredibly incongruous "based on...styled after" testimony (*Ciaffoni's Estate*, 60 Wash. Co. Reports 88 (27 August 1979)) as to the source of the comparative stylistic, typist-Gray deviations that characterize the pair of questioned wills:

> [I]n writing the 1967 will which was later amended by the 1968 will...I followed the format of another attorney...Patrick Derrico who had written a Will for Paul Ciaffoni in 1965. In fact there are whole paragraphs in my 1967 Will that are word copied from Mr. Derrico's 1965 Will.

b. In his 21 April 1983 deposition, DiSalle incongruously derogates the essence of comparative stylistics and gramformprints, and especially as they pertain to the ultra-ideal circumstances in the case at bar, with these words at page 102: "I thought it was something silly...." And at page 103: "I thought it was a bunch of nonsense...."

c. Under "Exhibit 10," at page 3-100 to 3-103 of his 13 July 1983 deposition, DiSalle submits and authenticates the "30 will exemplars" referenced in item F(1) above.

d. In referencing the three university level observers (Drs. Robert L. Parslow and Jon A. Shanks,

and Rev. Andrew Q. Morton, F.R.S.E.) who had independently concluded (contrary to DiSalle's and Gray's repeated testimony) that the pair of questioned wills were not the combined work product of the DiSalle-Gray team, Hilton denies the repeated admonitions and admirably detailed instructions of his prolific writings with these words at page 379 of his direct examination on 1 April 1965:

> Well, frankly I didn't know these people they hired were experts or not. I knew that they were -- There were rumblings they were getting people here to testify about various things that were beyond the scope of my work, but I didn't know the men, I didn't know whether they were experts or not or who they were, and I didn't know whether they were actually going to testify or even offered as experts (Emphasis added.)

As illustrative only of Hilton's endorsement of the tenets of comparative stylistics as promulgated herein and by the three university level observers, with the focus on "various things...beyond the scope of [his] work," see Hilton's Scientific Examination of Questioned Documents, Revised Edition, 1982, Elsevier publishers, at pages 3, 10 ("Nonidentity of Source"), 150, 158, 161 ("Nonidentity of Writings"), 250, 330, 334, and 346-348.

3. Robert J. Ciaffoni, appellant; Elizabeth C. Cowden, Appellee, In Re: 7 August 1991 order of Philadelphia Judge Edmund S. Pawelec, assessing Robert J. Ciaffoni with the financially intimidating sum $31,574.14, predicated on Judge Pawelec's now unequivocally demonstrable, unsound 22 June 1987 decision in

Estate of Paul Ciaffoni at 63-74-942 in re the validity of pair of questioned wills referenced in item 1 above, and now before the Supreme Court of Pennsylvania at 625 W.D. Allocatur Docket 1992.

4. *Gray v. Ciaffoni et al*, No. 218 April Term, 1981 A.D. On 12 September 1990 Robert J. Ciaffoni filed a 4-page, "Motion to Withdraw 9 July 1982 Motion to Dismiss and Counterclaim," attached. The Counterclaim joined Richard DiSalle and Elizabeth C. Cowden. Gray, DiSalle and Cowden, in toto, being referenced as the three principle advocates of the same pair of questioned wills referenced in item 1 above. On or about 10 January 1991, Gray's attorney, Kenneth J. Yablonski, filed a "Praecipe for Discontinuance" to an appeal he had filed with the Superior Court of Pennsylvania at 1866 PGH 90, attached.

Item G. Brief description of nature of action and result below:

Twenty-one-page "Second Motion for New Trial, Nunc Pro Tunc" was filed by Robert J. Ciaffoni with Judge Pawelec on 18 November 1992, followed by "Corrections" on 20 and 21 November 1992. The "[First] Motion for New Trial, Nunc Pro Tunc" was filed with Judge Pawelec more than two years previous, on 3 September 1990. On 6 September 1990, during the hearing that culminated in the 7 August 1991 order that is the subject of Item F(2) above, Judge Pawelec acknowledged receipt of the 3 September 1990 motion. To date, Judge Pawelec has failed to act upon that 3 September 1990 motion.

Judge Pawelec has failed and refused to consider the exponentially enlarged certainty of the conspiratorially perjured testimony of the three advocates of the pair of questioned wills, as presented in the aforesaid Second Motion. The perjured testimony defines fraud upon the Pawelec Court, and by that court's refusal to recognize the clear evidence of that fraud, it has grossly abused its discretion by infringing on the due process rights of the appellant-contestant herein. By quoting DiSalle's "I was sloppy" testimony (pp. 26 and 47, 22 June 1987 order), as the source of the deviations, Judge Pawelec effectively acknowledges the obvious and numerous deviations from the DiSalle-Gray combination, characteristic of the pair of questioned wills. However, it is incongruous that DiSalle's "sloppiness" would account for deviations in Gray's known patterns of stylistic alternatives in grammar and format -- patterns reflecting habits and routine practices established over a period of more than eight years in the repetitive reduction to type of scores of deeds and wills annually. Apparently, it was just too incredible for Judge Pawelec to endorse DiSalle's relied upon explanation during the September 1978 Keim Court Trial and as late as DiSalle's 21 April 1983 deposition. That testimony being that the pair of questioned wills were "based upon...styled after...derived from...patterned after...copied from..." the 22 December 1965 unquestioned will prepared for Paul Ciaffoni under the auspices of Attorney Patrick C. Derrico. See *Ciaffoni Estate*, 60 Wash. Co. Reports 88 (27 August 1979), as to the court's recital of the referenced first two quoted terms above.

Judge Pawelec's "suspicion and conjecture" descrip-

tion (p. 52, 22 June 1987 order) of the appellant-contestant's application and results of applying physical evidence of combinations of stylistic alternatives in grammar and format to solutions of questioned writings, its contrary to every day's experience and reasoning of all literate persons. Moreover, it is contrary to acknowledged authorities as illustratively expressed by comment and case citations in the latest editions of American Law Reports (annotated 36 ALR4th 598), McCormick on Evidence (Sections 195, 207 and 221), Weinstein's Evidence (Paragraph 901(b)(4)[3]), Wharton's Criminal Evidence (Section 486), and Wigmore on Evidence (Sections 87, 92-94, 99, 221, 376, 379 383, 2024, 2129, 2148 and 2149). Moreover, it is especially incongruous in reference to the ultra-ideal circumstances that present themselves in the case at bar.

Effectively, Judge Pawelec gives credence to fraud by failing and refusing to follow the implied and unanimous, 20 May 1982 mandate of the Pennsylvania Supreme Court. That mandate being to admit and apply that which is clearly delineated in the scenarios of the definitions of comparative stylistics and "gramformprints." See item F(1) above. Judge Pawelec abused his discretion when he failed to consider, in light of the enlarged rationale and evidence, a fundamental and long recognized tenet of Pennsylvania law as expressed in the culminating paragraph of *West Homestead Boro v. Erbeck*, 230 Pa. 316, 318 (1911):

> The gist of its complaint is this fraud, and in the face of such a charge, if made and sustained, even in a collateral proceeding, neither record, award, judgment nor decree will furnish shelter to the wrongdoer: *Mitchell v. Kintzer*, 5 Pa. 216 [1847]; *Phelps et al.* v. Benson, 161 Pa. 418 [1894].

Item H. Issues to be raised on appeal:

1. Denial of due process by the Pennsylvania judiciary in general and that of the Pawelec Court, in particular;

2. Gross abuse of discretionary power by the Pawelec Court;

3. Pattern of effective suppression of highly relevant evidence, contrary to long established precedent as to the admissibility and applicability of such evidence;

4. Case law illustratively articulated at the terminus of Item G above, under *West Homestead Boro v. Erbeck* as being applicable on all fours to the case at bar;

5. Exponentially enlarged evidence in the form of 30 DiSalle office, DiSalle authenticated will exemplars, in combinations with some 445 prior submitted exemplars (96 wills and 349 writings from the Recorder of Deeds Office of Washington County), and like enlarged and widely acknowledged rationale as sufficient to warrant a granting of a new trial;

6. Exponentially enlarged rationale requiring that the trial court comply with the 20 May 1982 mandate of the Pennsylvania Supreme Court as to the applicability of that rationale as set forth in (1) the publicized definitions of comparative stylistics and gramformprints and (2) the rationale of authoritative writers as further explicated in the manuscript on file in the University of Pittsburgh Law School Library at KF8720/.C53/1990 (revised 1992), titled "Comparative Stylistics and Gramformprints: Their Application is Solving Questioned Writings, Focusing on Lawyer-Logotyped Wills," compiled by Robert J. Ciaffoni -- abstract attached.

7. Unrebutted and unrebuttable fingerprint accuracy of perjured testimony by the three advocates of the pair of questioned wills as to the determinant issues of the testamentary and physical sources of that same pair of wills;

8. Endorsement by Ordway Hilton (the court's expert "relied upon" by the advocates of the pair of questioned wills, and also independently retained by DiSalle in *Post-Gazette*) of the recently and exponentially enlarged combined evidence and rationale establishing the complementary techniques of comparative stylistics and gramformprints under the ultra-ideal circumstances that present themselves in the case at bar;

9. The substantial differences in detail and testamentary intent in DiSalle's 31 January 1968, alleged notes of instructions compared with that which appears in the '68 will, with emphasis on units SECOND, THIRD and SEVENTH of that will;

10. The substantial differences in detail and testamentary intent in Cowden's, attached, 9-page, 3 June 1975, chart of testamentary distribution compared with that which appears in the '68 will, with emphasis on units THIRD and ELEVENTH of that will;

11. That monetary issue referenced is Item F(3) above be held in abeyance until the central issue presented herein; that is, reexamination of the fraudulence of the pair of questioned wills in light of the vastly modified circumstances of evidence and rationale, is finally adjudicated.

IN THE COURT OF COMMON PLEAS OF
WASHINGTON COUNTY
PENNSYLVANIA

CIVIL DIVISION

HONORABLE NORMAN A. SHAULIS OF
SOMERSET COUNTY
SPECIALLY PRESIDING

Frances M. Gray,	:	
Plaintiff	:	
vs.	:	
Robert J. Ciaffoni, Concetta	:	No. 218 April Term
Ciaffoni, J. Brooke Aker, Esq.	:	1981
and the business entity of	:	
Smith, Aker, Grossman,	:	A.D.
Holinger & Jenkins,	:	
Defendants.	:	

MOTION TO WITHDRAW 9 JULY 1982 MOTION TO DISMISS AND COUNTERCLAIM

AND NOW this 12th day of September 1990 comes Robert J. Ciaffoni, pro se, and requests this Honorable Court to withdraw Robert J. Ciaffoni's 9 July 1982 Motion to Dismiss, and further requests this Court to consider a Counterclaim by defendant Robert J. Ciaffoni against Frances M. Gray (Gray), joining Richard DiSalle (DiSalle) and Elizabeth C. Cowden (Cowden). A brief outline and reasons follow:

1. On 30 April 1980 the Pennsylvania Court, in a split decision without rationale, upheld the 27 August 1978 decision of Judge Earl S. Keim of Westmoreland County, specially presiding, in the ongoing "Ciaffoni-DiSalle Fraud-Based Will Contest" of Washington County at 63-74-942. See *Ciaffoni Est.*, 60 Wash. Co. 88 (1978), and *Ciaffoni Est.*, 491 Pa. 46, 417 A.2d 1136 (1980).

2. On 13 April 1981, Frances M. Gray (Gray), under the above captioned number and term filed a defamation suit against claims by the contestants that Gray, DiSalle and Cowden had perjured themselves as to the origin and testamentary intent of the alleged testator, Paul Ciaffoni (born 20 April 1895, died 23 September 1974), of a certain questioned probated will bearing execution date of 10 May 1968 ('68 will), and its questioned forerunner, bearing execution date of 29 November 1967 ('67 will). Gray premised her suit, inter alia, on (1) the finality of the 30 April 1980 decision by the Pennsylvania Supreme Court and (2) "a report from one Ordway Hilton, the world's foremost renown examiner of questioned documents"; a report admittedly premised on "exemplars" furnished by DiSalle, and excluding will exemplars of public record originating in DiSalle's law office.

3. On 4 May 1981, Robert J. Ciaffoni filed Preliminary Objections in the form of a Demurrer, claiming inter alia, (1) failure to state a cause of action and (2) lack of capacity to sue.

4. On 9 September 1981, Concetta Ciaffoni, widow of Paul Ciaffoni, joined with Robert J. Ciaffoni in

Motion for Recusement of former colleagues of Judge Richard DiSalle on the Washington County bench. Further requested was the recusement of judges from Philadelphia County, or counties adjoining Philadelphia and Washington Counties.

5. Following a pair of Motions for New Trial Nunc Pro Tunc (25 July 1980 and 7 May 1981) by contemnt Robert J. Ciaffoni, the Pennsylvania Supreme Court in a 20 May 1982, unprecedented act, vacated and reversed Judge Keim's 27 August 1979 decision and their own "final" decision of 30 April 1980. As the ultimate issue in the underlying case at 63-74-942, the Pennsylvania Supreme Court effectively mandated the trial court to apply the evidence of the stylistics of grammar and format reflected in the voluminous DiSalle office exemplars. The Pennsylvania Supreme Court ruled that the evidence of applying the stylistics of grammar and format had been erroneously suppressed by Judge Keim. More so, they ruled that the Pennsylvania Supreme Court itself had been a part to that suppression. See pages 1 and 2 of Item (5) of Enclosure No. 1 of Robert J. Ciaffoni's EXHIBIT "A" to this Motion. EXHIBIT "A" is titled "Motion for New Trial Nunc Pro Tunc," dated 3 September 1990, with 4 and 10 September 1990 addends, and filed with the Judge Edmund S. Pawelec at 63-74-942.

6. During the June-July 1983 Philadelphia Trial, and in his decision four years later on 22 June 1987, Philadelphia Judge Edmund S. Pawelec ignored the mandate of the Pennsylvania Supreme Court and repeated the acknowledged, erroneous suppression that characterizes Judge Keim's 27 August 1979 decision. As

to the source of the scores of deviations from the overwhelmingly established stylistics of grammar and format that characterize the DiSalle office exemplars of the decade-long, DiSalle-Gray combination, Judge Keim opined that the '68 will was "styled after a prior will drafted for decedent by another attorney." (60 Wash. Co. 93). In his 22 June 1987 decision, Judge Pawelec abandoned Judge Keim's explanation for the multitude of deviations, and attributed them to the "I was sloppy" testimony of DiSalle. (22 June 1987 Decision of pages 26 and 47.)

7. Subsequent to the 22 June 1987 Pawelec Court decision, two tribunals simply "adopted," admittedly without independent rationale, the 22 June 1987 decision:

a. Court en banc composed of two Philadelphia area judges and Judge Pawelec;

b. The Pennsylvania Superior Court, without permitting oral argument.

The Pennsylvania Supreme Court refused allocatur.

8. It is in the matter of the subsequently (to the '83 Philadelphia Trial) and exponentially enlarged certainty (per comparative stylistics) that Gray and DiSalle perjured themselves as to the origin of the '68 will, that is the gravamen of this Motion and Counterclaim. Judge Keim's summarized his rebuttal to the contestant's September 1978 presentation to what is now termed comparative stylistics:

Contestants offered testimony of alleged experts propounding unproven and concededly 'novel' theories which was ruled inadmissible. (60 Wash. Co. 91)

9. Judge Pawelec simply and completely ignored the issue of applying evidence of the stylistics of grammar and format. The advocates of the pair of questioned will repeatedly cite Ordway Hilton (Hilton) in support of their position. Markedly, it is the rationale in Hilton's book that defines the indicting parameters of comparative stylistics as they pertain to the underlying issue of the origin of the '68 will.

COUNTERCLAIM

10. As to the Rules of Civil Procedure permitting this counterclaim against Gray, the joining of DiSalle and Cowden as additional defendants, and the damages against Gray, DiSalle and Cowden are set forth at Rule 1031, "Counterclaim," and Rule 2252, "Right to Joining Additional Defendants."

11. As to the certainty that Gray, DiSalle and Cowden perjured themselves as to the origin of the '68 will, reference is made to the rationale of comparative stylistics and that of its current broad acceptance in the legal and scientific communities. See EXHIBIT "A," 3 September 1990 with 4 and 10 September 1990 addends, "Motion for New Trial Nunc Pro Tunc," now pending before Judge Pawelec.

12. It is requested that the undersigned be given the option to depose Gray, DiSalle, Cowden and Hilton,

plus such additional persons as findings in the interim the court may deem appropriate.

13. Time to file this Joinder and Counterclaim is not deemed to be of the essence. At any rate, because of the serious allegation of fraud upon the court, the undersigned believes the interpretation of time adverse to the undersigned would be properly suspended by this Court.

14. The damages claimed by the undersigned are in excess of arbitration jurisdiction.

Respectfully submitted,

/s/ Robert J. Ciaffoni

Robert J. Ciaffoni, pro se
311 Crawford Street
Canonsburg, PA 15317
Phone: 412-745-3270

12 September 1990

LAW OFFICES
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#6094

January 10, 1991

Robert Ciaffoni
311 Crawford Street
Canonsburg, PA 15317

RE: Gray v. Ciaffoni
Superior Court Appeal

Dear Mr. Ciaffoni:

As per your telephone conversation with Mr. Yablonski, please find enclosed a copy of the Praecipe for Discontinuance.

Thank you for your attention to this matter.

Very truly yours,

/s/ Jack A. Carson

Jack A. Carson

IN THE
SUPERIOR COURT OF PENNSYLVANIA

Frances M. Gray,	)	
Plaintiff,	)	
v.	)	No. 1866 PGH 90
	)	
Robert J. Ciaffoni,	)	
Concetta Ciaffoni,	)	
J. Brooke Aker Esquire	)	
and the business entity of	)	
Smith, Aker, Grossman,	)	
Hollinger & Jenkins,	)	
Defendants.	)	

PRAECIPE FOR DISCONTINUANCE

Please discontinue the above-captioned appeal. There are no other pending appeals in this action.

Respectfully submitted,

YABLONSKI COSTELLO LECKIE & CHABAN

By **/s/ Kenneth J. Yablonski**
KENNETH J. YABLONSKI, ESQUIRE
Attorneys for Plaintiff/Appellant
505 Washington Trust Building
Washington, PA 15301
(412) 225-9130

ABSTRACT

Comparative Stylistics[1] and Gramformprints[2]:
Their Application in Solving Questioned Writings,
Focusing on Lawyer-Logotyped[3] Wills
by
Robert J. Ciaffoni, Comparative Stylist
311 Crawford St., Canonsburg, PA 15317-3705,USA

Presented are newly codified dimensions in solutions of questioned writings, as illustrated by the three definitions of the titled, numerically suffixed terms, coined and initially promulgated as such, by this author:

1. Comparative stylistics: see the latest (6th, 1990) edition of *BLACK'S LAW DICTIONARY*.

---

[1]Underscored quote is from the definition of comparative stylistics; see 1 above.

[2]See reverse side of this sheet for incisive and culminatingly effective, combined definition and scenario of "Gramformprints (expanded)," which reverse side is the photocopied final page of the manuscript titled in the caption.

[3]Lawyer-Logotyped (1992): "A single piece of type expectantly serving, *inter alia*, as the putative identifying symbol of the combined work product of a given writing of a lawyer and his secretary-typist." -- a Takeoff from "logotype" as defined in Merriam-Webster's Ninth New Collegiate Dictionary.

Key terms: See the above three defined terms, plus "nonidentity of typist."

GFP20892

2. Gramformprints: as defined under "Bar Briefs" in the 26 April 1991 issue of the *Pittsburgh Legal Journal*; to wit:

> Comparative stylistic patterns, which, by their predictably recurrent absence or presence, serve to accurately and minimally elicit nonidentity-of-typist solutions to questioned writings; wherein "gramform[s]-" equate to "stylistic alternatives in grammar and format" and "-prints" signify the combined attributes of typewriter printing and fingerprints; and wherein the applicability of the "patterns" factor in the solution of questioned wills premised on nonidentity of typist, is epitomized by predated and postdated comparison exemplars from a sole-practitioner's law office, singly staffed by a multiyear secretary-typist: physical source of scores of deeds and wills annually. (Not defined in *BLACK'S LAW DICTIONARY*, but a corollary to defined "comparative stylistics.")

PART IV, PAGE 4

GRAMFORMPRINTS (expanded). Comparative stylistic patterns, which, by their predictably recurrent absence or presence, accurately and minimally serve to elicit nonidentity-of-typist solutions to questioned writings; wherein "gramform[s]-" equate to "stylistic alternatives in [gram]mar and [form]at,"[1] and "-prints" signify the analogous individualization of the work product of the prolific typist of like writings, to that of finger[prints]; and wherein the applicability of the "patterns" factor in the solution of paired, multipage, questioned companion wills, premised on nonidentity of typist, is epitomized by predated, postdated, and interdated comparison exemplars from a sole-practitioner's law office, singly staffed by a multiyear secretary-typist: physical source of scores of deeds and wills annually. (Not defined in *BLACK'S LAW DICTIONARY*, but a corollary to defined "comparative stylistics.") -- Robert J. Ciaffoni, Comparative Stylist. (May, 1991)

Addend (7c) to "We, the Comparative Stylists and Slueths Within!"

---

[1]Underscored: Key terminology from definition of comparative stylistics in latest (6th, 1990) edition of *BLACK'S LAW DICTIONARY*.

IN THE SUPERIOR COURT OF PENNSYLVANIA

In Re Estate of Paul Ciaffoni,	)	
Deceased	)	
Appeal of Robert J. Ciaffoni	)	No. 278 PGH 93
Lower Court Case No. 63-74-942	)	

REPLY TO "APPLICATION TO QUASH APPEAL"

NOW THIS 21st day of March 1993, comes Robert J. Ciaffoni, pro se, appellant-contestant herein, and replies to appellee-proponent Elizabeth C. Cowden's "Application to Quash Appeal" of appellant-contestant filed on 3 February 1993. The said two, unnumbered pages of said application (erroneously designated "No. 0239 Pittsburgh 1992") are dated 2 March 1993, with a cover letter dated 3 March 1993, postmarked Philadelphia, 8 March 1993, and delivered on 10 March 1993. The first paragraph of Judge Pawelec's cited two-paragraph order ends the initial page of Cowden's application, and the second paragraph does not appear on the second page. Inasmuch as the two pages are unnumbered and without sentence continuity between them, it becomes a question of a possible missing, intervening page. Further, contrary to instructions, no copy of the said order was "appended...as Exhibit 'A'." Explanations and corrections by the appellee-proponent are in order.

For the following substantial reasons, the application of appellee-proponent Cowden is herewith requested to be denied:

1. The "Second Motion for New Trial, Nunc Pro Tunc," filed on 18 November 1992, is the second of two collateral, companion proceedings filed by the undersigned. The "[First] Motion for New Trial, Nunc Pro Tunc" was filed on 3 September 1990, and acknowledged as received by Judge Pawelec on page 3 in an open court transcription on 6 September 1990. To date that first motion has been otherwise ignored by Judge Pawelec.

2. The propriety of the two motions and that of the ensuing 3 February 1993 appeal under 278 PGH 93, are explained in the 11-page, 9 March 1993 "Civil Docketing Statement" filed under 278 PGH 93. Said statement is attached as EXHIBIT ONE, less certain of its designated attachments, which omitted attachments and other referenced items are incorporated herewith by reference thereto.

3. Further demonstrating the utter lack of virtue and the current, proven absurdity of the position of the three principle advocates (Richard DiSalle, Elizabeth C. Cowden and Frances M. Gray) of the pair of questioned wills, is the 2 April 1985 (beginning at 3:25 P.M.) testimonial statements by Cowden's longtime (since 1977) Philadelphia attorney, Richard A. Sprague. See attached EXHIBIT TWO, being 3 preface pages and pages 239-259 of *Post-Gazette*). Sprague witnessed in behalf of DiSalle in *Post-Gazette* (see EXHIBIT ONE, page 2, item 2). In referencing the three university level observers (EXHIBIT ONE, page 3, item 2d; and EXHIBIT TWO, pages 241 and 242) and their contestant-endorsing

conclusions predicted on "style" (EXHIBIT TWO, pages 244 and 257), Sprague incongruently describes the currently codified stylistic and gramformprints conclusions of the three referenced observers as "illogical" and "logically did not follow" (EXHIBIT TWO, pages 245 and 256); and "preposterous" (EXHIBIT TWO, pages 245, 246, 256 and 257).

4. Sprague's testimony in item 3 above, specifically enlarges upon the incongruity of that of DiSalle and Ordway Hilton as referenced in *Post-Gazette* (EXHIBIT ONE, pages 2 to 4, item 2. In elucidating that incongruity, the complementary techniques of comparative stylistics and gramformprints are treated in detail in appellant-contestant's abstract of his 82-page manuscript referenced in EXHIBIT ONE, page 7, item 6(2). A 2-page overview of that 82-page manuscript is EXHIBIT THREE herein.

5. As with item 4, above, Sprague's testimony enlarges upon Judge Pawelec's incongruous dependence on DiSalle's "I was sloppy" and like dependence on that trial court's "suspicion and conjecture" descriptors, referencing the tenets of comparative stylistics and gramformprints, as commented upon in EXHIBIT ONE, pages 4 to 7, Item G, "Brief description of nature of action and result below."

6. In the same vein as items 3, 4 and 5 above, consider Sprague's testimony of 2 April 1985, EXHIBIT TWO, in context with his following illustrative, earlier pleadings emanating from 63-74-942, referenc-

ing the same subject matter:

> [18 December 1979, at page 11 of the 41-page brief to the Supreme Court of Pennsylvania at No. 121 March Term, 1979] The most important reason for excluding proffered evidence about the linguistic or typing style [currently codified under comparative stylistics and gramformprints] of the decedent's Will is that it is derived from an earlier will prepared by another attorney....
>
> [at page 18 of the same pleading] A major fact which completely negates the value of linguistic analysis [currently codified under comparative stylistics and gramformprints] in this case is the testimony of Judge DiSalle that he based this will [dated 10 May 1968] on an earlier will drafted by him [dated 29 November 1967], which was itself based on another attorney's earlier will for the decedent [dated 22 December 1965].

Sprague speaks in behalf of the three principle advocates of the pair of questioned wills in his ongoing, but futile attempts to explain away (1) the current, consummate obviousness of the absence of Gray as the typist of the said pair of wills, (2) the like-expressed absence of the DiSalle-Gray combined work product, (3) the like-expressed absence of the testamentary intent of alleged testator Paul Ciaffoni, and (4) the presence of appellee-proponent Cowden as the like-expressed, supplanting party in each of the first

three instances.

7. As to "fraud" versus "finality," and the appellee-proponent's claimed "final order" of the Supreme Court of Pennsylvania of 28 December 1989 (signatory page, item 4, 2 March 1993, "Application to Quash" in 278 PGH 93), see attached EXHIBITS ONE and TWO. Said EXHIBITS ONE and TWO, in combination with the following citations of the two highest pertinent courts in the land, speak loudly and clearly in demanding the denial of Cowden's application, however the status of Judge Pawelec's 12 January 1993 order may be interpreted by this Court:

a. *West Homestead Boro v. Erbeck*, 230 Pa. 316, 318 (1911):

> The gist of its complaint is this fraud, and in the face of such a charge, if made and sustained, even in a collateral proceeding, neither record, award, judgment nor decree will furnish shelter to the wrongdoer: *Mitchell v. Kintzer*, 5 Pa. 216 [1847]; *Phelps et al. v. Benson*, 161 Pa. 418 [1894].

b. *United States v. Ohio Power Co.*, 77 S. Ct. 652 (second paragraph under "Opinion of the Court") (1957):

> We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules. This policy finds

> expression in the manner in which we have exercised our power over our own judgments, both in civil and criminal cases. [Citations omitted; cited by the Supreme Court of Pennsylvania in their unanimous and unprecedented reversal as expressed in the *Estate of Paul Ciaffoni*, 498 Pa. 267, 466 A.2d 225 (20 May 1982), 36 ALR4th 595, certiorari denied *Cowden v. Ciaffoni*, 103 S.Ct. 447 (29 November 1982).]

For all of the reasons stated, this Honorable Court is requested to deny the obviously incongruent request of the appellee-proponent Cowden, which request is designed wholly to thwart the interests of justice.

Respectfully submitted,

/s/ Robert J. Ciaffoni

Robert J. Ciaffoni, pro se
Comparative Stylist
311 Crawford Street
Canonsburg, PA 15319
Phone: 412-745-3270

21 March 1993

SUPERIOR COURT OF PENNSYLVANIA
CIVIL DOCKETING STATEMENT

PURSUANT TO PA, R.A.P. 3517, YOU MUST COMPLETE AND RETURN TOP THREE COPIES OF THIS FORM TO THE PROTHONOTARY OF THE SUPERIOR COURT NO LATER THAN *3-8-93*.

Case Caption: *In Re: Estate Of Paul Ciaffoni, deceased*
Superior Court Docket No: *278 PGH 93* County *Washington*

Party or Parties Filing Appeal:*Robert J. Ciaffoni,Son of Paul Ciaffoni*

A. Timeliness of Appeal

(1) Date of Judgment or order appealed from: *12 January 1993*

(2) Date notice of appeal filed: *03 February 1993*

(3) Was reconsideration requested or granted in the lower court: *No*

B. Appeal From Trial Court (Finality)

(1) Attach copies of the trial court's judgment, order or decree appealed from and a copy of the trial court docket.

(2) Is the order appealed from a final, appealable

(3) If the order is not a final order: *N/A*
(a) is the order appealable as of right under Pa. R.A.P. 3117 (specify which subsection)

(b) was permission to appeal granted pursuant to:

(i) Pa. R.A.P. 13117 ___ Misc. Dkt. No. _____

(ii) Chapter 15, Pa. R.A.P.? ___ Misc. Dkt. No. _____

(4) How have issues been preserved? (e.g., timely exceptions, post-trial motions, motion to remove non-suit, petition to strike/open) (include date of filing). *Timely Exceptions: First Motion 03 SEP 90, Second Motion 18 NOV 92*

C. Nature of Disposition Below: (If Domestic Relations matter, proceed directly to Section E)

( ) Judgment after bench trial
( ) Judgment after jury verdict
( ) Summary Judgment
( ) Judgment on the Pleedings
( ) Decree _____
( ) Default Judgment
( ) Grant/Denial of Injunction
( ) Grant/Denial of Declaratory Relief
( ) Dismissal:

( ) Lack of Jurisdiction

( ) Failure to State a Claim
( ) Failure to Prosecute
( ) Other

(x) Other disposition (Specify) *First Motion-Ignored, Second Motion -- Dismissed*

D. Nature of Relief Sought Below:

( ) Damages: amount sought: $_____ amount granted $_____
( ) Attorney's fees: amount sought: $ _____ amount granted: $_____
(x) Other (specify) *New Trial*

E. Domestic Relations -- Type of Case: (Check as many as apply) *N/A*

( ) Custody/Visitation
( ) Habeas Corpus
( ) Adoption Act (e.g., termination of parental rights)
( ) Juvenile Act (dependency proceeding)
( ) Child Support
( ) Spousal Support
( ) Paternity
( ) Protection From Abuse Act
( ) Other (specify) _____

Divorce: Check those which apply

( ) Decree
( ) Alimony pendente llte

( ) Counsel Fees
( ) Alimony
( ) Equitable Distribution
( ) Special Relief
( ) Other (specify) _____

If this appeal involves the Divorce Code of 1980, was the divorce bifurcated? (Give date and, if applicable, attach lower court's statement of reasons permitting the bifurcation).

F. Related cases: List all related cases pending in any court (e.g., co-defendants, cross appeals, cross claims, counterclaims, bankruptcy proceedings) *See separate pages attached*

IF NECESSARY ATTACH PAGES FOR COMPLETION OF G. AND H.

G. Brief description of nature of action and result below: *See separate pages attached*

H. Issues to be raised on appeal: *See separate pages attached*

Signature: ***/s/ Robert J. Ciaffoni*** *Date:* ***09 March 1993***

[First page only of Exhibit One, 21 March 1993, See R.349a-376a]

EXHIBIT TWO, 21 MARCH 1993

IN THE COURT OF COMMON PLEAS OF
WASHINGTON COUNTY, PA
(Civil Division)

* * *

Richard DiSalle and Joan DiSalle, Plaintiffs,	)
vs.	)No. 367 Sept. Term 1979
P.G. Publishing Company, trading as the Pittsburgh Post-Gazette, a corporation, Defendant.	)

* * *

TRIAL BY JURY

HEARD: April 1 to 15, 1985

BEFORE: Hon. Gilfert M. Mihalich, J.
Specially Presiding
Westmoreland County Courthouse
Greensburg, Pennsylvania 15601

APPEARING: For the Plaintiffs,
Daniel Berger, Esquire
508 Law & Finance Building
Pittsburgh, Pennsylvania 15219

For the Defendant:
Frederick N. Egler, Esquire
and
Avrum Levicoff, Esquire
2100 Lawyers Building
Pittsburgh, PA 15219

* * *

HEARD: April 1 to 15, 1985

1551 Pages

plus Exhibits

APRIL 2, 1985
TUESDAY AFTERNOON SESSION
PROCEEDINGS RECONVENED - 1:45 P.M.

DIRECT EXAMINATION, continued

BY MR. BERGER:

Q Mr. DiSalle, after you had the discussion with Mr. Leherr concerning the Commonwealth Court race, did you have a further discussion with Mr. Leherr?

A. Yes, I did.

Q And would you tell us when that took place.

A That took place the same day, immediately following my interview regarding my campaign.

Q Was it in the same room?

A Same room.

Q Who was --

A I think it was after -- I think after we concluded the interview with respect to my campaign, he called a photographer in to take some pictures of me in connection with a series of articles he was doing, and after the photographers left he said to me that he wanted to ask me some more questions, not related to the campaign.

Q Okay. And can you tell us what conversation then ensued.

A Well, he started off by saying there were some

THE COURT: Court stands in recess for about five minutes.

PROCEEDINGS RECESSED - 3:15 P.M.

* * *

PROCEEDINGS RECONVENED - 3:25 P.M.

THE COURT: All right.

MR. BERGER: If the Court please, with the Court's permission and Mr. Egler's permission, we would withdraw Mr. DiSalle temporarily from the stand and call as a witness Richard Sprague.

* * *

Sprague by Berger

I object to that as not being within the offer.

THE COURT: Objection sustained, because I can't rule on it. You have to be a little more specific.

MR. BERGER: Okay.

THE COURT: You talked about a will contest; there was two days of testimony. If you could be a little more specific, I could rule on Mr. Egler's objection.

In connection with will contest, Mr. Sprague, if you had been asked by the reporter whether at the will contest trial it had been established as to whether the will was authentic or not, would you have responded to that question?

MR. EGLER: If the Court please, I object to that. It's not in the offer.

THE COURT: Objection overruled.

A Yes, I would have responded.

Q And what would you have told the reporter?

A I would have told the reporter that the contest established the will was authentic and valid and not secured improperly or by any fraud or substitution of pages.

Q And, Mr. Sprague, at the time that you were an attorney participating in the Ciaffoni will contest proceeding, did you know of the name of Ordway Hilton?

Sprague by Berger

A Yes, I did.

Q And what was your understanding at that time as to who Ordway Hilton was and what he had done with reference to the Ciaffoni will?

A He was a recognized handwriting expert, and had conducted examinations concerning the will.

Q And did you have an understanding as to what he had concluded from his examination of the will?

A Yes, I had.

Q And what was your understanding as to what he had concluded?

A He had concluded that there were no substitution of pages and the signature was authentic.

Q And, Mr. Sprague, if the reporter from the Post-Gazette had asked you to comment on what Ordway Hilton had done with reference to his examination of the will, would you have entered into such a conversation and answered the question?

A Yes, I would have.

Q What would you have told the reporter?

A I would have told him as I just said.

Sprague by Berger

Q Mr. Sprague, if the reporter when he called you had asked you whether at the trial of the will contest there had been any evidence offered concerning any relationship between Richard DiSalle and Elizabeth Cowden, would you have answered that question?

MR. EGLER: Excuse me. If the Court please, I object to that as not being within the offer.

THE COURT: I have already ruled on that. Objection sustained.

MR. BERGER: You may cross-examine.

CROSS-EXAMINATION

BY MR. EGLER:

Q Mr. Sprague, Robert Ciaffoni did not testify at the proceedings, did he?

A He did not.

Q If the reporter from the Post-Gazette had called you and asked you about the will proceedings, would you have told him that the proponents of the will had three expert witnesses whose testimony were offered by Mr. Akar to the effect that the will that was in evidence, the purported

Sprague by Egler

Paul Ciaffoni will, was in fact not a product of the DiSalle-Gray combination or was not a will typed by the DiSalle-Gray combination?

THE COURT: Just a minute. Maybe I missed what you said. Did you say proponents?

MR. EGLER: The contestants. Excuse me.

THE COURT: Better ask the question again. Just to make sure the jury understands your question, and the witness understands your question, would you please repeat it.

MR. EGLER: You're right.

Q If the reporter for the Post-Gazette had asked you about the will contest proceedings in front of Judge Keim, would you have told them that the contestants of the will through Attorney Aker had made an offer of evidence of three experts who would have said that the will was not the will of Paul Ciaffoni because there had been substitution of pages?

A I would have told the reporter what the contestants had offered. I do not think the offer was quite as you have just worded it.

Sprague by Egler

Q Suppose you tell us what you thought the offer was.

A My recollection is that the contestants offered an expert to suggest that the typing that appeared on two pages was not the typing that existed from Judge DiSalle's office, and therefore to draw a conclusion from that that there was a substitution of pages. My further recollection is that they offered another expert to state that he had examined a number of wills that Judge DiSalle had drawn up for other people, and because he found the format and the style of those wills to be different from this particular will, he was drawing a conclusion that Judge DiSalle could not have been the scrivener, the one who drew up these disputed pages in the Ciaffoni will. My further recollection is that they offered to produce an expert to show that there was some indentation on a page, and to suggest comparing the indentation of the page with the backer, that therefore could not have come from the Ciaffoni will, and from those various things to draw a collusion attacking the will.

Q And if they gave those conclusions as their opinion, and those opinions were believed, then the will would have been stricken; isn't that correct?

A Not in my opinion.

Sprague by Egler

Q If the will -- If their opinion, the expert opinion, was that the will that was produced was not a will of which Richard DiSalle was the scrivener, then it was contrary to what Richard DiSalle said in upholding the will; isn't that correct?

A It wasn't quite that way, if I may respond.

Q You may respond, but didn't you say that one of the expert's opinion based on the style led him to the conclusion that in his opinion Richard DiSalle was not the scrivener of the will?

A Not of the will; of these two pages. It's my recollection he tried to draw the inference from an examination of other typing that he could not have been the scrivener of the will. I don't think the conclusion even of the expert followed. The expert had said because he had examined other wills, and the style of those wills was different than this will, his conclusion that therefore Judge DiSalle did not draw up these pages in my opinion did not follow. Wills are drawn up differently for different people on different occasions. Sometimes wills are drawn up based on form books; you have a law clerk work on it. Sometimes a prior lawyer drew up a will, and the succeeding lawyer works on it; he adopts the style of the prior lawyer. So that when they were testifying to style, it did not and would not fit into an opinion that Judge DiSalle had not drawn up these two pages.

Q But you do not agree with the expert; is that right?

A That's correct.

Q But the expert was going to say, if allowed, that in his opinion, for whatever reason, Judge DiSalle was not the scrivener of that will; isn't that correct?

A Of those pages.

Q Of those pages, which were part of that will.

A That's correct.

Q So if those pages were not part of the will, then the entire will was not true and correct; isn't that correct?

A That would be correct.

Q So the will could then be stricken if that opinion prevailed; is that correct?

A If their opinion, as illogical as it was, was believed, yes, you're correct.

Q Now would you have told the reporter that?

A Absolutely.

Q Pardon me?

Sprague by Egler

A Absolutely I would have told the reporter, because I would have pointed out that in pointing it out how preposterous it was.

Q You would have pointed out it was preposterous, but you would have pointed out that it could have happened --

A I would have pointed out what the contestants claimed.

Q And as a matter of fact, the Supreme Court of Pennsylvania said they should be allowed to show that; isn't that correct?

MR. BERGER: If the Court please, I would object to that.

THE COURT: Objection overruled.

A At first the Supreme Court of Pennsylvania said that it was correct of Judge Keim not to permit that evidence in. A couple years thereafter a succeeding Supreme Court reversed that ruling and said that that evidence at least should be heard.

Q Right. And that evidence will be heard by a jury, and a jury may believe that evidence and decide that they're right; isn't that right?

A Technically you're wrong. It won't be heard by a jury; it will be heard by a judge.

Q A fact-finder who may believe it; is that right?

A A fact-finder.

Q A fact-finder who may believe that opinion; is that right?

A It could.

Q Now may I have a copy of the article?

Mr. Sprague, did you read the article? Did you ever read the article?

A I believe I did. Years back.

Q You haven't read it recently, have you?

A No, I have not. Do you want me to look at it now?

Q Do you want me to go ahead or would you like to look at it?

A Whatever you want me to do.

Q It's your choice, since you're from Philadelphia.

A You ask me a question and I'll decide.

Sprague by Egler

Q Mr. Sprague, the article indicates that there was a -- I'll help you; it's in the second column. The article, does it not, indicates that an injunction was filed in the Washington County Courthouse, naming as co-conspirators Elizabeth Cowden and Commonwealth Court Judge Richard DiSalle who prepared the will in 1968 as an attorney, does it not?

A You're asking me just to read what's here?

Q I'm asking you if it says that.

A The second column?

Q Yeah; about the fourth paragraph.

A I'll read it. It says: In a request for an injunction filed in the Washington County Courthouse, he -- talking about Robert Ciaffoni -- names as co-conspirators her and Commonwealth Court Judge Richard DiSalle who prepared the will in 1968 as an attorney.

Q And was that true that such an injunction had been filed?

A I believe so.

Q And the next point in the article states: The injunction requests that Mrs. Cowden not be permitted to quote, exercise the rights and powers of a co-executor of the family fortune, and quote, because as a co-conspirator in a fraud she could, quote, invite recrimina-

Sprague by Egler

tions against those who have charged her with fraud.

Is that what the article says?

A That's correct.

Q That was contained in the injunction, was it not?

A I believe so.

Q Then the next paragraph: In February, visiting Judge Earl Keim of Westmoreland County, who heard the case in Washington County, upheld the authenticity of the will and ruled as inadmissible claims by experts hired by the contestants that portions of the will were altered.

Q Is that what the article says?

A That's correct.

Q That was true, Judge Keim did so rule?

A That is correct.

Q And was later overruled by the Supreme Court of Pennsylvania; is that right?

A The second time.

Sprague by Egler

Q The second time around. Right?

A That's correct.

Q And, in fact, the next point said: The opponents of the will have vowed to take the case to the Supreme Court if they lose.

Does it not say that?

A Yes, it does.

Q And that's what they did.

A That's correct.

Q They took it to the Supreme Court; isn't that correct?

A That's correct.

Q And they won the second time around.

A They didn't win. That's misleading. The second time around the Supreme Court said that they will change their earlier ruling, and that there should be a re-hearing before a judge who is designated to be a judge in Philadelphia to hear the entire case over, including that kind of offer, that kind of testimony, if the contestants wanted to present them.

Q And then over in the next two lines over -- not lines -- two columns I think would be more accurate --

A On the fourth column?

Q Yeah. It refers to a deposition taken by you of Robert DiSalle, does it not? Or Robert Ciaffoni. Richard DiSalle. Excuse me. It refers to a deposition taken by you of Robert Ciaffoni; is that right?

A Yes.

Q You took that deposition?

A Yes, I did.

Q Do you remember asking those questions?

A Do I remember now? No. But if it's here, I assume it's accurate.

Q And do you remember taking the deposition of Concetta Ciaffoni?

A I remember taking the deposition of each of them, Robert and Concetta. If you ask me do I remember the specific questions, no, I do not.

Q If you look at the article where it refers to Concetta, down at the bottom of the column, Mr.

Sprague by Egler

Sprague, it says: In another deposition taken by Sprague, he questioned the widow, Concetta, about a conversation she had with her husband shortly before his death in which she asked her husband if he knew that Elizabeth was getting the family homestead and the Brookline Junction property.

According to the deposition, Ciaffoni's reply to his wife was: No, sir. I did not sign. Call her right now.

Do you remember that?

A Yes, I do remember that.

Q Is that an accurate quote?

A Yes, it is.

Q And she said he then screamed at me. I thought he was going to take a heart attack.

And I said no, you wait until you get better, and he quieted down, and that was the conversation we had.

That's when I wanted specifically -- I felt that he did not know, because he couldn't see or hear too good.

Is that an exact quote?

A That's an exact quote of part of the deposition,

not the entire deposition of her.

Q That deposition or the testimony of the widow was not allowed to be put in evidence, was it not?

A Well, if you're asking me was there an offer to put her deposition into testimony, I frankly do not now recall.

Q Don't you --

A She was present, I think, there in the court room, and I'm not sure about the offer of the deposition testimony. There was an offer to put certain testimony in. This is different than the experts' testimony, which for reasons of law was not permitted, which is still the ruling in the case.

Q But that was on the corroboration aspect; isn't that correct?

A Had to do that there was no -- The ruling was that there had to be some evidence of fraud or you could not present this other oral testimony, and the judge said there was no evidence of fraud in the first instance and this testimony could not be admitted, which was upheld by the Supreme Court.

Q But if these experts proposed by the contestants get in the next time, this testimony of Concetta will not be barred for that reason.

A Well, your statement the next time is misleading, because the next time has already occurred, and there has been whatever testimony was presented before a judge in Philadelphia.

Q Has that decision come down yet?

A The decision is expected any day.

MR. EGLER: That's all I have.

* * *

REDIRECT EXAMINATION

BY MR. BERGER:

Q Mr. Sprague, in the hearing before Judge Keim, did Robert Ciaffoni testify?

A I frankly do not remember.

Q Did Concetta Ciaffoni testify?

A I'm sure she did not. And as I think about it, there was an offer, and none of them testified.

Q What do you mean there was an offer?

A There was an offer that the lawyer for the contestants made, which was ruled upon by the judge,

and after that offer they did not put on any evidence.

Q And what was the ruling by the judge?

A The ruling by the judge was certain limited areas of limitation of testimony, but not preventing them from testifying, and they did not then testify.

Q And the offer was made by whose attorney?

A Mr. Aker, the lawyer for the contestants.

Q Now you say that there has been a proceeding in Philadelphia; is that correct?

A That's correct.

Q And who was representing the contestants in that proceeding?

A Ultimately Mr. Ciaffoni was representing himself. Robert Ciaffoni was representing himself.

Q And at that proceeding in Philadelphia --

A But there were lawyers there at various stages.

Q In that proceeding in Philadelphia, did Robert Ciaffoni testify?

A I cannot answer that, because another lawyer from my firm handled the proceeding in Philadelphia.

Sprague by Berger

Q Do you know whether Concetta Ciaffoni testified?

A I cannot answer.

Q Do you know, Mr. Sprague, whether any of these experts testified in the proceeding in Philadelphia?

A I can only tell you what my recollection is based upon what I was told by the associate in my office who handled the case.

MR. EGLER: If the Court please, I object to that as hearsay.

THE COURT: Objection sustained.

Q Did you read the transcript yourself, Mr. Sprague?

A No, I did not.

Q Could you tell us who these experts were at the time of the hearing before Judge Keim, what their backgrounds were, what their qualifications were.

A Asking me to recall names of seven years ago. I could not -- If I heard the names, I would probably remember their names. I remember there was a handwriting individual who I thought was very qualified. There was somebody from London or

England. That's about as good as I can do.

Q Was Ordway Hilton called to testify in that trial? Before Judge Keim.

A We had his report; we turned it over to the Court. I frankly do not now remember whether it was just his report or he testified.

Q Mr. Sprague, you said in your --

A I think he did testify, but it's speculative on my part.

MR. EGLER: If the Court please, I move it be stricken as speculative.

THE COURT: Yes, objection sustained. It's pure speculation. You're to dismiss it from your minds, and it's stricken from the record.

Q Mr. Sprague, you testified that if you had been asked about these experts, that you would have said that their opinions or testimony was preposterous. What do you mean by that?

A Well, what they were saying just logically did not follow, and I would have made available the notes of testimony of the offer of proof with regard to their

testimony. For example, to contend that a will that I might draw up for you is not my product, which one suggested in this case; my secretary who typed it relates that she type it; my secretary and I do not inherit anything under the will and have no motive here, for why. Secondly, the onionskin copies -- these are the days of carbon paper, carbon typing -- the onionskin copies of the pages were located and they were the same pages as on the will. When we had that fact, which I would have told the reporters, as well as then the contention by their experts that drawing up my -- my drawing up a will of somebody else, and because the wording in that will is a different type wording means that I didn't draw up your will, just doesn't make sense. I draw up wills for people, and somebody might come in and if it's a one-page will I might use one form. From time to time I'll change the different form books. I'll have different law clerks that maybe work on it, so there will be a different style, depending on what form book I'm using, what clerk I'm working with.

As I said earlier, a longer will -- and the will in the Ciaffoni case, by the way, was a longer will than Judge DiSalle had generally drawn up for other people. But when I draw up other wills, many times the individual coming to me has had a prior lawyer, and he brings to me the prior will. I don't just make it different for the sake of making it different. I might copy the form of the prior lawyer, just making the changes that the testator wants me to make.

Sprague by Berger

So for anybody to say when they see a will that I say I drew up, but the style is different from another will that I drew up, and then therefore I couldn't have drawn up this will, is just preposterous.

Q Mr. Sprague, do you recall how the Ciaffoni will, which was proffered for probate, was assembled, that is held together?

A I have -- Well, I have a recollection of what do you call these -- not hooks -- paper --

Q Rivets?

A Yes; a thing that goes through the papers. it kept them together there.

Q Was there any evidence presented or offered in any of these proceedings by any of these experts that any of the pages of the will had been disassembled from these rivets with which the will was assembled?

MR. EGLER: Object to the question as leading.

THE COURT: Objection overruled.

A I have no recollection of such being offered.

MR. BERGER: Those are all the questions I have.

THE COURT: Any recross?

MR. EGLER: Yes sir.

* * *

RECROSS-EXAMINATION

BY MR. EGLER:

Q Mr. Sprague, have you ever tried any cases where you disagreed with the expert witnesses and you found that the fact-finder did agree with the expert witness?

A Yes.

Q And in those situations your opinion what you thought about the expert witness didn't seem to agree with the jury's opinion; is that right?

A Never happened with a jury.

Q Has it happened with a fact-finder, a judge?

A Happened with a judge.

Q And this case would go back with a judge; is that correct?

A Pardon?

Q This case, the Ciaffoni estate, would go back to a judge.

A Did go back to a judge.

Q Did go back to a judge. By the way, Mr. Sprague, did you know that Ordway Hilton was the expert who verified and said the fake Hitler Diaries were true?

MR. BERGER: Objection, Your Honor.

THE COURT: Objection sustained.

MR. EGLER: That's all.

* * *

REDIRECT EXAMINATION

BY MR. BERGER:

Q Mr. Sprague, do you recall whether Ordway Hilton -- whether Ordway Hilton commented in his report upon the assembly of this will by means of rivets?

A Again, I have a vague recollection that there was a reference to it, but I am only speculating about that.

MR. BERGER: Okay. That's all.

MR. EGLER: That's all.

EXHIBIT THREE, 21 March 1993

A-4 Observer-Reporter, Washington, PA
March 13, 1990

COMPARATIVE STYLISTICS

[-- Forerunner Precepts --]

Your editorial of March 5, "Clear things up," ties in with an Associated Press article, "Ex-KGB agent talks of spies, murder plots." You suggest that between ex-KGB agent Victor Ivanovich Sheymov and glasnost, the time is at hand for enlightenment of three episodes: (1) the KGB in an alleged plot to kill the pope (late 1970s), (2) Felix Bloch as an alleged double USA-USSR agent (late 1980s), and (3) Alger Hiss in a role (late 1940s) not unlike that describing the Felix Bloch episode.

I offer another episode for enlightment, an editorial ["Modern Investigation"] you published in 1984 [on 9 August]. Nine days later, in the Letterbox, you printed my comments to that editorial. Highlights of that episode are reiterated here.

It had been determined by our government that the KGB, under the guise of the K[1]u Klux Klan, had sent typewritten letters to a number of "African nations warning them of the dire consequences of sending their athletes to the [1984] Olympic Games in Los Angeles...their purpose to influence the nations receiving them to join the USSR and other communist countries in boycotting the Olympics.

"The determination was not made by the primitive method of finding a KGB typewriter that had key peculiarities that appeared in the letters. It was determined by relatively new techniques involving habits in the structure of sentences, makeup of phrases, use of words that are as distinctive in this process as are fingerprints in personal identification.

"How accurate is it? Accurate enough that the American government had the confidence...to charge the Soviet Union with this political 'dirty trick' [not only to an American Bar Association audience, but through it to the entire world.]"

In my letter, I showed that the yet unnamed technique was not "new" by citing a 1943 case [*Covington Estate*, 348 Pa. 1] wherein the technique was endorsed by the Pennsylvania Supreme Court. It can now be shown that in Anglo-American jurisprudence, that 1943 case is predated and postdated by numerous like cases featuring the same technique.

Both 1984 articles refer to "fingerprint" certainty in the determination of the origin of certain questioned writings. The technique used is, of late, appropriately termed "comparative stylistics." Comparative stylistics is described as a highly effective technique wherein solutions to questioned writings are premised on the comparisons of the numerous alternatives in grammatical and formatting styles, and the accompanying habits and routine practices that characterize the reduction of language to writing, with emphasis on typewriting. Quality and quantity in exemplars are prerequisites.

Fingerprint certainty that a series of typed, poison-pen letters originated with the KGB, and not the KKK, would suggest that no USSR confirmation is necessary. True, confirmation would add little or nothing to the technique itself. However, confirmation would add to our awareness and appreciation of the ever-present embers of the requisite, but yet pervading skills of the comparative stylist -- skills acquired on the long, arduous road to literacy, focusing on the reduction of language to type.

Robert J. Ciaffoni
Canonsburg

COMPARATIVE STYLISTICS

-- November 1992, Codified Precepts --

Concerned with: Questioned typewritten discourse. [1], [2], [3]

Premised on: "*Stylistic alternatives in grammar and format*," and from which fingerprint-accurate solutions are often elicited via gramformprints. [1a], [2], [3, sub-PART I: (a) "We, the Comparative Stylists and Sleuths Within!" (26 pp.), and (b) Addend (5) to "We...": "Sourcê-Study of Forensic Linguistics and Comparative Stylistics: Applying Physical Evidence of Combinations of Gramforms" (8 pp.); and PART III.]

Epitomized by: Absence/presence of rote patterns of a secretary-typist in a nonidentity-of-origin solution of a questioned writing. [2a], [3, PART I: p. viii, Tim Menees' 4 April 1991 cartoon of a late 19th Century courthouse scene, captioned: "IMPERTINENCE -- NEXT, THEY'LL TRY TO BRING IN TYPEWRITERS!!!" with comments.]

Ultimate focus on: Questioned lawyer-logotyped wills. [2a], [3, PART I: pp. iv(a-f), "Gramformprints: A newly Codified Dimension in Solutions of Questioned Writings": see SET VII; and PART III.]

==========

[1] COMPARATIVE STYLISTICS. An evidential technique focusing on nonidentity of typist of questioned writings. [1a] Matter-of-fact solutions are premised on comparisons of the numerous stylistic alternatives in grammar and format, and the individualized habits and routine practices inherent in the repetitive

reduction of like writings to paper, with emphasis on typewritings. (Omitted: two case citations and five references.) - - BLACK'S LAW DICTIONARY, 6th Edition, July 1990. See also AMERICAN LAW REPORTS, Annotated 36 ALR4th 598, 599 note 1, 605 (1985).

[2] GRAMFORMPRINTS (expanded).[1] Comparative stylistic patterns, which, by their predictably recurrent absence or presence, accurately and minimally elicit nonidentity-of-typist solutions to questioned writings; wherein "gramform[s]-" equate to "*stylistic alternatives in [gram]mar and [form]at,*"[2] and "-prints" signify the analogous individualization of the work product of the prolific typist of like writings, to that of *finger[prints];* and [2a] wherein the applicability of the "patterns" factor in the solution of paired, multipage, questioned companion wills, premised on nonidentity of typist, is epitomized by predated, interdated and postdated exemplars from a sole practitioner's law office, singly staffed by a multiyear secretary-typist: physical source of scores of deeds and wills annually. (Not defined in BLACK'S LAW DICTIONARY, but a corollary to defined comparative stylistics.)

[3] "Comparative Stylistics and Gramformprints: Their Application in Solving Questioned Writings, Focusing on Lawyer-Logotyped Wills," by Robert J. Ciaffoni; 82 pages: PARTS I-IV: PART I: "Comparative Stylistics: Accurate Nonidentity of Typist of Questioned Writings Via Gramformprints"; PART II: Curriculum Vitae;

---

[1]"[E]xpanded" from its definition in the *Pittsburgh Legal Journal*, "Bar Briefs," 26 April 1991.

[2]For source of 6-word, italicized quote, see note [1a] above.

PART III: Enhanced "Comparative Stylistic Harbingers," 37 examples; PART IV: Four Key Definitions; filed in the University of Pittsburgh Libraries at KF8720/.C53/1990 (revised 1992), the Washington and Jefferson College Library, and a number of others.

No. 80-775

SUPREME COURT OF THE UNITED STATES

October Term, 1980

CONCETTA CIAFFONI, ET AL.
PETITIONERS

V.

ELIZABETH COWDEN, ET AL.
RESPONDENTS

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH
OF PENNSYLVANIA

PETITION FOR REHEARING AS TO PETITION FOR WRIT OF CERTIORARI

Theodore E. Breault, Esq.
1000 Lawyers Building
Pittsburgh, PA 15219
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PETITION FOR REHEARING AS TO
PETITION FOR WRIT OF CERTIORARI

The Petitioners, Concetta Ciaffoni, Robert J. Ciaffoni and Margaret C. Soviero, pursuant to Rule 31 give notice to this Honorable Court of the following intervening circumstances of substantial effect not previously presented and not available at the time they filed their petition, to-wit:

1. That on Friday, December 5, 1980, there appeared on page 6a of the *Pittsburgh Post-Gazette*, a newspaper of general circulation in Southwestern Pennsylvania, an article entitled: "Stag Dinners Attended by Larsen, Political Figures". In the article, reference is made to Richard DiSalle, the self-professed scrivener of the contested will, as being in attendance at alleged political dinners involving members of the Pennsylvania Supreme Court. The following is a verbatim reprint of a pertinent paragraph from that article describing Richard DiSalle as one of the attendants:

> "Richard DiSalle, former Commonwealth Judge and Washington County Common Pleas Judge, who was recently confirmed for a vacancy on the expanded Superior Court. From January to November this year, DiSalle was a $1541-a-month administrative assistant to Supreme Court Judge John P. Flaherty."

2. That on the following Tuesday, December 9, 1980, there appeared on page A-4 of the *Observer-Reporter*, a newspaper of local distribution in the Washington County area, an article entitled: "Larsen's

County Connection." In this second article, "surprise" is expressed as to Richard DiSalle's employment by the Pennsylvania Supreme Court. The final two paragraph of that article are set forth verbatim herewith:

> "There was also an interesting sidelight of interest to this county in the large mass of information relating to Justice Larsen's activities. It was the statement that former Commonwealth Court and Washington County Court Judge DiSalle had been on the state payroll as an Administrative Assistant to Supreme Court Justice John P. Flaherty from January to November of this year at a monthly salary of $1,541. That figure almost exactly matches the salary DiSalle has been receiving from this county as its solicitor over roughly the same period. It was a piece of information that came as a surprise to a number of DiSalle's associates and colleagues.
>
> "This set of circumstances does not impute any particular impropriety on the part of DiSalle, but becomes a matter of magnified interest when it is realized that Justices Larsen and Flaherty enjoy a colleagueship closer than may be usual than among members of a court."

3. That the contents of said newspaper articles and their ramifications caused the petitioner, Robert J. Ciaffoni, named executor on execution page 7 of the contested will, to make an investigation. As a result of his investigation, he obtained on December 16, 1980, a written memorandum from the Payroll

Department of the Office of the Controller of Allegheny County, Pittsburgh, Pennsylvania, a city in which the Pennsylvania Supreme Court sits.

4. That said memorandum contained the following information:

A. Code 411504 is the computer code number assigned to employees of the Pennsylvania Supreme Court and under which Richard DiSalle was paid.

B. That from January 7, 1980 to November 3, 1980, Richard DiSalle was listed as an employee of the Pennsylvania Supreme Court under Job Number 12.

C. Richard DiSalle earned, during that time, $1541.66 per month, payable bimonthly, reflecting the product of a 5-day-week, 8-hour workday and a specified hourly rate of $8.8942.

5. In addition, during the same period, Richard DiSalle acted as the County Solicitor and maintained a private law practice in his name at Millcraft Center, Washington, Pennsylvania.

6. That the information obtained indicates that the Pennsylvania Supreme Court deliberated and handed down two separate decisions, without opinion, and adverse to the petitioners, the one on April 30, 1980 and the other on June 16, 1980. During this same period, Richard DiSalle was a "consultant" to the same court which was sitting in judgment of evidence to

determine the admissibility of his work product, which in turn, related directly to the veracity of his testimony.

7. That this relationship with the Pennsylvania Supreme Court during the time period indicated, placed Richard DiSalle in a favored position with the said court. This relationship was not a matter of public knowledge, nor was it revealed to the petitioners herein.

8. That the rights of the petitioners were obviously prejudiced by Richard DiSalle's access to the inner circle of the Pennsylvania Supreme Court in their decisions, which decisions are counter to the established law of Pennsylvania for more than 100 years as it relates to the admission of evidence in cases in which fraud is alleged as a prime factor.

WHEREFORE, the requested Writ of Certiorari to the Pennsylvania Supreme Court should be granted.

Respectfully submitted,

Theodore E. Breault, Esq.
Attorney for the Petitioners

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 278 Pittsburgh 1993

In Re: Estate of Paul Ciaffoni, Deceased
Robert J. Ciaffoni, Appeallant
Elizabeth J. Cowden, Appellee

Record "a"

Volume _____: Pages R.1a to R.408a

Appeal from the Order of January 12, 1993, Court of Common Pleas, Orphans' Court Division, Washington County, Pennsylvania, Honorable Edmund S. Pawelec, Philadelphia County, Specially Presiding at No. 63-74-942

Robert J. Ciaffoni, pro se
Comparative Stylist
311 Crawford Street
Canonsburg, PA 15317
Phone: 412-745-3270

Dated 27 April 1993

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IN THE SUPERIOR COURT OF PENNSYLVANIA
Western District

No. 278 Pittsburgh

In Re: Estate of Paul Ciaffoni, Deceased
Robert J. Ciaffoni, Appellant
Elizabeth C. Cowden, Appellee

APPLICATION FOR REARGUMENT
OF 1 DECEMBER 1993 ORDER

Appeal of 12 January 1993 Order of Trial Court Dismissing Appellant's 18 November 1992 "Second Motion for New Trial, Nunc Pro Tunc" at 63-74-942

Dated 15 December 1993

Robert J. Ciaffoni, pro se
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IN THE SUPERIOR COURT OF PENNSYLVANIA
AT NO. 278 PGH 93

20 December 1993 ERRATA SHEET
To
Appellant's 15 December 1993, 11-Page

"APPLICATION FOR REARGUMENT
OF 1 DECEMBER 1993 ORDER"

Corrections in Table of Contents

Publication Items Omitted — Page

0a. "American Law Reports Annotated, 36 ALR4th 595 (1985)," wherein the featured commentary is upon *Ciaffoni II* (Case 8), wherein *Ciaffoni* (Cases 6 & 7) are vacated, and wherein *Kane* (Case 10), *Ohio Power* (Case 14), and Wigmore (Publication 5), Section 92, are cited in justification of the vacation..... 3, 7

0b. "American Law Reports Annotated, 36 ALR4th 598 (1985)," wherein *Ciaffoni II* (Case 8), *Kane* (Case 10), and *Hearst* (Case 13) are commented upon (See correction item 5 below)..... 6

Publication Items Omitted (Continued) Page

4a. Uniform Rules of Evidence: 20 November 1972 promulgated by the Supreme Court of the United States, targeting part [2], "specific instances of conduct...," of Rule 406b, "Method of Proof" of "Habit; Routine Practice"..... 11

Corrections in Body of Application

1. Page 1: Initial phrase of introduction paragraph should read: "NOW THIS 15 day of December 1993."

2. Page 5: Line 5, initial quote should read: "based upon."

3. Page 5: Line 11, Initial phrase should read: "named Patrick Derrico (id. 90)."

4. Page 6: Definition of gramformprints: *Kane* Atlantic Reporter cite should read: "168 A. 681 (1933)."

5. Page 6: Definition of gramformprints: Add as final sentence: "See also American Law Reports Annotated, 36 ALR4th 598 (forensic linguistics)." See item 0b above.

6, Page 10: Terminating phrase beginning on line 7 should read: "and matters of readily verifiable knowledge outside the segment."

IN THE SUPERIOR COURT OF PENNSYLVANIA

In Re:	Estate of Paul Ciaffoni,	)
	Deceased	)No. 278
	Robert J. Ciaffoni, Appellant	)PGH 93
	Elizabeth C. Cowden, Appellee	)
	Lower Court No. 63-74-942	)

Appeal of 12 January 1993 Order of Trial Court Dismissing Appellant's 18 November 1992 "Second Motion for New Trial, Nunc Pro Tunc"

APPLICATION FOR REARGUMENT OF 1 DECEMBER 1993 ORDER

NOW THIS 13th day of December 1993, comes the appellant, Robert J. Ciaffoni, pro se, and submits this application for reargument of this Court's 1 December 1993 order (Exhibit A) quashing appellant's 28 November 1992 "Motion for New Trial, Nunc Pro Tunc." The reasons for this application are grounded in the fact that the 3-judge panel has overlooked or misapprehended the following record, material to the administration of justice and the outcome of the case at bar:

1. Per Exhibit A, the adjudicating, 3-judge panel, defined by the journal number in the upper left hand corner of that exhibit, incongruously adopted, in toto, and without rationale, the "finally decided" argument of the appellee as set forth in appellee's 2 March 1993 "Application to Quash." The appellant's sustained charge of fraud by collusive perjury is not addressed.

2. The appellee's argument, in turn, is wholly dependent on the Pawelec Court's "previously determined" argument in its 12 January 1993 order. Again,

the appellant's sustained charge of fraud by collusive perjury is not addressed by the Pawelec Court.

3. The aforesaid "previously determined" and "finality" arguments are void of merit because they do not address the appellant's sustained and exponentially enhanced charge of fraud by collusive perjury. In addition, the appellee's previously determined and finality arguments are contrary to (a) reason and well established law and (b) testimony in a collateral issue (*DiSalle v. Pittsburgh Post-Gazette*, No. 367 Sept. Term 1979, Washington County), in which DiSalle and the appellee's attorney Richard A. Sprague, unsuccessfully attempted to explain away the absolutism that Gray did not type the pair of questioned wills, a fundamental element of appellant's sustained charge of fraud by collusive perjury.

a. As to "contrary to reason and well established law," reference is made to:

(1) *West Homestead Boro v. Erbeck*, 230 Pa. 316, 318 (1911), wherein the Pennsylvania Supreme Court ruled:

> The gist of its complaint is this fraud, and in the face of such a charge, if made and sustained, even in a collateral proceeding, neither record, award, judgment nor decree will furnish shelter to the wrongdoer: *Mitchell v. Kintzer*, 5 Pa. 216 [1847]; *Phelps et al v. Benson*, 161 Pa. 418 [1894].

(2) *United States v. Ohio Power Co.*, 77 S. Ct. 652 (1957) (second paragraph under "Opinion of the Court") the synopsized context reflects:

> [I]nterest in finality...must yield [to] interests of justice...both in civil and criminal cases.

Cited by the unanimous Supreme Court of Pennsylvania in its unprecedented reversal as expressed in the *Estate of Paul Ciaffoni*, 498 Pa. 267, 446 A.2d 225 (20 May 1982; *Ciaffoni II*), 36 ALR4th 595, certiorari denied *Cowden v. Ciaffoni*, 103 S. Ct. 447 (29 November 1982).

b. As to "contrary to testimony in a collateral issue" the following is pertinent:

(1) In his 21 April 1983 deposition in *Post-Gazette*[1], DiSalle, in referencing the analyzing techniques of that which is currently codified under comparative stylistics and gramformprints, states: "I thought it was something silly..." (p. 102), and "I thought it was a bunch of nonsense" (p. 103).

(2) In his 2 April 1985 testimony before a jury in the same *Post-Gazette*, Sprague, in referencing the same subject matter as DiSalle, replaces DiSalle's "silly" and "nonsense" descriptors with the analogous descriptors of "illogical" (p. 245) and "preposterous" (p. 246). Sprague de facto violated the attorney-client relationship when he joined DiSalle, "the real defendant" in the case at bar, in a common attempt to denigrate that which both knew, as veteran attorneys-at-law, to be a matter of common knowledge. On that basis alone the appellant should be entitled to a new trial, and minimally, Sprague and his firm should be disqualified from representing the appellee.

4. The charge of fraud has not only been "made

---

[1]See Table of Contents under "DiSalle v...."

and sustained" by the appellant, but the said charge has been exponentially enhanced to the level of an absolute certainty, by (a) voluminous additional DiSalle office, DiSalle authenticated will exemplars submitted to the Pawelec Court in spite of that court's blinding itself to consider any additional evidence after 19 July 1993, the termination date of the Philadelphia trial, and (b) recently articulated, and authoritatively, and widely endorsed rationale expressed by the complementary, codified techniques of comparative stylistics and gramformprints.

5. The Pawelec Court, the appellee, and the 3-judge panel of this Court have failed and refused to address the crucial issues of the physical and testamentary origins of the pair of questioned wills (dated 29 November 1967 and 10 May 1968) proffered by appellee and the other two principle advocates of said pair of wills; that is Attorney Richard DiSalle and his decade-plus, singular office employee, Frances M. Gray. Those crucial issues include the appellant's sustained charge of fraud by collusive perjury as to the determinant issue of the physical and testamentary origin of the pair of questioned wills.

6. To emphasize the appellant's early and sustained charge of fraud by collusive perjury as to the determinant issue of the physical and testamentary origins of the pair of questioned wills, referenced is made to the incredible and subsequently debunked rationale (498 Pa. 267, 20 May 1982) of the Keim Court decision in *Estate of Paul Ciaffoni*, 60 Washington County Reports 88 (27 August 1979). By its "based on" (id. 90) and "styled after" (id. 93) descriptors referencing (a) numerous "discrepancies [equating to dissimilarities] in [known Gray] typing style" (id. 92) established over

a period of some eight and one-half years (Spring 1959 to Fall (1967) as DiSalle's singular office employee, and (b) the unquestioned 1965 will "by an attorney named Patrick Derrico" (id. 91), the Keim Court enhanced that which it would denigrate -- that is, the obviousness that the dissimilarities in typing style, even at that early date, unerringly pointed to the absence of typist-Gray and enhanced the certainty of the presence of typist-Cowden. That early recognition and articulation of the inherent usefulness of stylistic alternatives in grammar and format in solutions to questioned writings subsequently bore fruit in their codification as succinctly expressed in the definitions of comparative stylistics[2] and gramformprints.[3]

7. The rationale underpinning appellant's charges that the said three advocates have engaged in conspiratorial perjury as to the aforesaid crucial issues is readily comprehended by interested literates. That comprehension translates into an absolute conviction, and punctuates the appellant's sustained charge of fraud, when the relationship between the known scenario in DiSalle's office, is shown to be analogous to that of the readily envisioned scenario in the following enhanced definition of gramformprints:

> Comparative stylistic patterns, which, by their predictably recurrent absence or presence, accurately and minimally elicit nonidentity-of-typist solu-

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[2]Comparative stylistics is defined in the latest (6th, 1990) edition of BLACK'S LAW DICTIONARY.

[3]Gramformprints is defined in the 26 April 1991 issue of the *Pittsburgh Legal Journal*. See unit 7 immediately below for enhanced definition of gramformprints.

tions to questioned writings; wherein "gramform[s]" - equate to "stylistic alternatives in [gram]mar and [form]at," and "-prints" signify the analogous individualization of the work product of the prolific typist of like writings, to that of finger[prints]; and wherein the applicability of the "patterns" factor in the solution of paired, multipage, realty disposing, questioned companion wills premised on nonidentity of typist, is epitomized by predated, postdated and interdated comparison exemplars from a sole practitioner's law office, singly staffed by a multiyear secretary-typist: physical source of scores of deeds and wills annually. In re *State of Uhls*, 121 Kans. 587, 249 Pac. 97 (1926), and *Kane's Estate*, 312 Pa. 531, 168 A. 6581 (1933). See Federal and Uniform Rules of Evidence: Rule 201 "Judicial Notice" (The essence of comparative stylistics, being a by-product of literacy, is a matter of common knowledge with literates. Literacy is the rule. See Rule 701 below.); Rule 406 "Habit; Routine Practice," (a) "Admissibility. Evidence of the habit of a person or the routine practice of an organization...," (b) "Method of Proof. [S]pecific instance of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine"; Rule 701 "Opinion testimony by lay witnesses" (The rule is that lay witnesses equate to literate persons. See Rule 201 above.) Rule 901 "Authentication and Identification (of writings)," per (b) (3) by "Comparison," and per (b)(4) by "Internal patterns." See also (in latest (6th, 1990) edition of BLACK'S LAW DICTIONARY): Comparative stylistics, Custom, Habit, Pattern, and Usage ("Practice in fact").

Uhls and *Kane* are cited in the latest edition of

Wigmore on Evidence; *Uhls* under Section 2149, "Illiterate's letter, typewriting"; *Kane* under Section 2024, "Ink, paper, spelling, and the like." *Uhls* and *Kane* support, on all fours, appellant's argument of the propriety of applying physical evidence of stylistic alternatives in grammar and format to solutions of questioned writings. *Kane* is cited in the lone dissent of Justice Roberts in *Estate of Paul Ciaffoni*, 491 Pa. 46, 417 A.2d 1136 (30 April 1980; *Ciaffoni I*). *Kane* is also cited in the unanimous and unprecedented reversal of the Supreme Court of Pennsylvania in *Estate of Paul Ciaffoni*, 498 Pa. 267, 446 A.2d 225 (20 May 1982), 36 ALR4th 595, certiorari denied, *Cowden v. Ciaffoni*, 103 S. Ct. 447 (29 November 1982). *Kane*, like *Ciaffoni*, is substantially premised on nonidentity of an alleged typist of a questioned will. *Kane*, unlike *Ciaffoni*, references only two exemplars, "a letter and a deed -- as forming a basis of evidence which was sufficient to overcome alleged eyewitness testimony of the scrivener and two subscribing witnesses." *Ciaffoni* references some 349 DiSalle office writings on file in the Recorder of Deeds Office of Washington County, and 126 DiSalle office wills, for a grand total of 475 exemplars. In *Kane*, the unanimous Supreme Court of Pennsylvania considered two stylistic differentiators sufficient to determine that the alleged typist had lied and "destroyed" (312 Pa. 541) the case for the proponents of a questioned will. In *Ciaffoni* there are scores of differentiators that fulfill examiner Hilton's Socratic instructions (see unit 8 below) with multiplicity, and over a wide range of stylistic alternatives in grammar and format. The following is a quote from page 10 of Hilton's book under "Nonidentity of Typist":

> Actually, in virtually all problems of nonidentity there is a number of differences, but a single one, if fundamental in nature and not due merely to

chance, would be sufficient for the proof.

The data only touched upon in this submission was submitted in detail to the Pawelec Court and the 3-judge panel. In spite of the obvious need for oral argument, the same was refused, based on a procedural technicality.

8. Ordway Hilton, Landrum, SC, author of Scientific Examination of Questioned Documents (rev. 1982), is the widely and authoritatively published, and often quoted examiner of questioned writings specifically "relied upon" by each of the aforesaid three advocates. The following appears in Hilton's cited book at page 10 under "Preliminary Considerations" and as the culminating sentence under "Nonidentity of Source":

> It is a basic axiom of identification in document problems that a limited number of differences, even in the face of strong, numerous similarities, are controlling and *accurately* establish nonidentity. (Emphasis added)

And at page 161 of Hilton's cited book, under "Nonidentity of Writings," the following, like culminating and unusually dogmatic discourse appears:

> *Everyone* seems to appreciate that two writings are not by the same individual when there are a vast number of differences, but a few fundamental dissimilarities may not seem to lead to so *positive* a conclusion. Nevertheless, they do. (Emphasis added)

On 3 April 1985, in *Post-Gazette*, Hilton answered questions as DiSalle's retained witness, which questions

referenced the use in *Ciaffoni* of the implicit tenets of comparative stylistics and gramformprints by three university level observers. At page 379 of his transcribed testimony Hilton answered that such use "was beyond the scope of my work." Hilton's obvious endorsement in his book of the tenets of comparative stylistics and gramformprints is one of thirty-six like endorsements under the title of "Harbingers of Comparative Stylistics." "Harbingers of Comparative Stylistics" is PART III of appellant's four-part, 82-page manuscript titled "Comparative Stylistics and Gramformprints: Their Application in Solving Questioned Writings, Focusing on Lawyer-Logotyped Will." "Comparative Stylistic and Gramformprints" is on file in a number of public libraries in Western Pennsylvania and elsewhere, including the (Main) Carnegie Library of Pittsburgh (KF8968.5C5), and the University of Pittsburgh Law School Library (KF8720/C53).

9. The 3-judge panel failed to give due consideration to (a) appellee's utter dependence on *Frye*[4] in the appellee's early attempts to denigrate the then uncodified techniques of comparative stylistics and gramformprints, and (b) the current devastating effect by *Daubert*[5] on that dependence -- that is, if indeed the concept of comparative stylistics and gramformprints, at the level applicable to the case at bar, is not deemed to have crossed the threshold into the ever expanding field of judicial notice. Certainly, the "accurate" and "positive" nonidentity properties of comparative stylistics and gramformprints, minimally attributable to the scenarios reflected in their definitions, are matters of common

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[4]See Table of Contents.

[5]See Table of Contents.

knowledge to a substantial segment of the legal community, and matter of readily verifiable knowledge outside that segment.

As to appellee's dependence on *Frye*, the following is illustrative:

a. In refusing the tenets of comparative stylistics and gramformprints, and ruling in favor of the appellee, the Keim Court stated in *Estate of Paul Ciaffoni*, 60 Washington County Reports 88, 91 (1979):

> Contestants offered testimony of alleged experts propounding unproven and concededly "novel" theories, which was ruled inadmissible.

b. At page 20 of appellee's 21 February 1979 "Brief in Opposition to Exceptions Filed by Concetta Ciaffoni, Robert J. Ciaffoni, and Margaret Ciaffoni Soviero to Order Dismissing Appeals from Probate and to Various Evidentiary Rulings" at 63-74-942, two cases are invoked by the appellee to demonstrate the reach of *Frye*, and to persuade the Keim Court to exclude that which has become to be known as comparative stylistics and gramformprints. Those two cases are: *Commonwealth v. Topa*, 471 Pa. 223 (1977) and *United States v. Hearst*, 412 F. Supp. 893 (1976).

10. The 3-judge panel failed to give due consideration to *Aurand v. Universal Carloading and Distributing Co.*, 131 Pa. Super. 502, 507, whereat controlling rationale is cited in the application of the "acid test" in proving "usage and custom" evidence (readily interchangeable with "habit and routine practice" evidence)

in *Shipley*[6], and wherein the *Shipley* court states at 83 F. Supp. 750:

> The existence of usage or custom can only be proved by numerous instances of actual practice and not by the opinion of a witness.

The "acid test" is a confirming statement of Uniform Rule of Evidence 406(b)[2], "Method of Proof," promulgated by the Supreme Court of the United States on 20 November 1972. Rule 406(b) reads in toto:

> Method of Proof. Habit or routine practice may be proved by [1] testimony in the form of an opinion or [2] specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

11. For all of the reasons set forth above, it is the prayer of the undersigned that the qualifying members of this Honorable Court reverse the 3-judge panel granting the undersigned appellant's application for reargument.

Respectfully submitted,

/s/ Robert J. Ciaffoni

Dated 15 December 1993

Robert J. Ciaffoni
Comparative Stylist
311 Crawford Street
Canonsburg, PA 15317
Phone: 412-745-3270

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[6]See Table of Contents.

J. S47025/93

IN THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

In Re: Estate of Paul Ciaffoni, Deceased	:	
Robert J. Ciaffoni, 1993 Appellant	:	No. 0278 PGH
Elizabeth C. Cowden, Appellee	:	

ORDER

AND NOW, to wit, this 1st day of December 1993, upon consideration of the Application to Quash Appeal and the Reply to Application to Quash Appeal which have been filed in the above-captioned matter, the appeal is hereby QUASHED.

PER CURIAM

IN THE SUPERIOR COURT OF PENNSYLVANIA

In Re: Estate of Paul Ciaffoni, Deceased	)	
Robert J. Ciaffoni, Appellant	)	No. 278 PGH 93
Elizabeth C. Cowden, Appellee	)	
Lower Court No. 63-74-942	)	

APPLICATION FOR REARGUMENT
OF 1 DECEMBER 1993 ORDER

Appeal of 12 January 1993 Order of Trial Court Dismissing Appellant's 18 November 1992 "Second Motion for New Trial, Nunc Pro Tunc"

PROOF OF SERVICE

I certify that I have this 15th day of December 1993, served a copy of the captioned matter by first class mail, postage prepaid, certificate of mailing to:

Superior Court of Pennsylvania
Attn: Ms. Eleanor R. Valecko
Deputy Prothonotary
1015 Grant Building
Pittsburgh, PA 15219
(Hand Delivered)

Richard A. Sprague, Esquire
135 S. 19th Street
Philadelphia, PA 19103

15 December 1993

/s/ Robert J. Ciaffoni
Robert J. Ciaffoni, pro se

VERIFICATION

Under the penalties of 18 Pa. C.S. Section 4094, relating to unsworn falsification to authorities, I verify that the facts set forth in the foregoing captioned matter are true and correct to my personal knowledge, information and belief.

15 December 1993

/s/ Robert J. Ciaffoni
Robert J. Ciaffoni, pro se
Comparative Stylist
311 Crawford Street
Canonsburg, Pa 15317
Phone: 412-745-3270

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IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 98 W.D. Allocatur Docket 1994

In Re: Estate of Paul Ciaffoni, Deceased
Application of: Robert J. Ciaffoni

Application for Reconsideration of
7 June 1994 Order

Denial of Allowance of Appeal from the 1 December 1993 Pair of Orders of the Superior Court at No. 278 Pittsburgh 1993, Quashing Robert J. Ciaffoni's Appeal from the 12 January 1993 Order of the Court of Common Pleas of Washington County at No. 63-74-942, Honorable Edmund S. Pawelec, Presiding

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Date: 14 June 1994

Robert J. Ciaffoni, pro se
Comparative Stylist
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Phone: 412-745-3270

RECEIVED
JUN 14 1994
SUPREME COURT
WESTERN DISTRICT

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NOW THIS 14th day of June 1994, comes Robert J. Ciaffoni, pro se, and files this Application for Reconsideration to this Court's 7 June 1994 order denying Petition for Allowance of Appeal filed on 28 February 1994. The 28 February 1994 filing was in response to a pair of 1 December 1993 Orders of the Superior Court Quashing Applicant's Appeal from the 12 January 1993 Order of the Common Pleas Court of Washington County, Honorable Edmund S. Pawelec, Specially Presiding. A copy of said 7 June 1994 order is Exhibit 1 [H18].

It is herewith certified that this application is filed in good faith and not for delay, and that this application is confined to intervening circumstances of substantial and controlling effect, to wit:

1. By the very contents of Exhibit 1, this Court implicitly confirms and substantially enlarges the established and prior-reiterated pattern of impropriety and accompanying bias and abuse of discretion that has characterized the acts of the pyramidally organized Pennsylvania judiciary from the inception of litigation in the underlying 63-74-942, some near score of years ago. Said confirmation and enlargement are intertwined as by-products of the litigation growing out of the embroilment of the seven members of the apex of the referenced pyramid, currently focusing on the numerous charges against Justice Larsen and countercharges by Justice Larsen against most, if not all of the remaining justices of the apex of that pyramid.

2. As recently brought out in a rare devolution of the inner workings of this Court in the celebrated rape-charged Berkowitz case, it is nigh impossible for any one member of this Court to thwart the ends of justice in a

given case before it, without the cooperation of a number of fellow justices, not to say nothing of cooperating members of the bar.

3. In spite of the current focus upon Justice Larsen, a State investigating grand jury has implied that multiple ills in the dispensation of justice are endemic to this Court, and because of the pyramidal structure of this State's judicial system, infests all of the lesser court's under its jurisdiction. This adverse condition is being focused on the time embracing Justice Larsen's tenure, which tenure began in January 1978, more than two years prior to this Court's infamous order of 30 April 1980 (491 Pa. 46); and more than four years prior to the implicit admission by this Court of that infamy, per its unanimous, unprecedented reversal and vacation on 20 May 1982 (498 Pa. 267); and more than eight years prior to the now obviously unsound 22 June 1987 decision of the Pawelec Court. In spite of (a) this Court's 20 May 1982, implied mandate of admissibility and applicability of the tenets of comparative stylistic evidence, and (b) the Superior Court's adoption of the Pawelec Court's implicit rejection of the applicability factor of that mandate, this Court has thus and injudiciously refused to grant allocatur.

4. By Justice Flaherty's recusal, the impropriety of his participation is recognized under the Rules of Ethics governing this Court. That impropriety relates to Justice Flagherty's and Justice Larsen's implicitly admitted colleagueship with Richard DiSalle during DiSalle's January to November 1980 employment by this Court as a "research consultant." However, per the official record, DiSalle's employment and accompanying colleagueship were not confined to Justices Flaherty and Larsen, but include all of the then members of this

Court. Per a prior-submitted 16 June 1982 letter from then Washington County President Judge Charles G. Sweet to this Court, DiSalle is correctly designated "the real defendant" in 63-74-942.

5. The then, above-average colleagueship between justices Larsen and Flaherty during DiSalle's, 10-month, applicant-undisclosed employment is referenced in Exhibit 2 [H20]. Exhibit 2 is a 7-page, 3 February 1981 certiorari to the Supreme Court of the United States, by the applicant herein and others, substantiating the impropriety, obvious abuse of discretionary power, and inherent demonstrated bias, by five of the six participating members of this Court per a 30 April 1980 decision adverse to the applicant herein (491 Pa. 46). Exhibit 2 is also an implicit, self-admission of the foregoing negative descriptors, when considered in conjunction with the 20 May 1982 decision (498 Pa. 267).

6. It would not be until more than six (6) years after the February 1981 filing; that is, on 22 June 1987, that the very questionably motivated Pawelec Court would repeat the officially declared and obviously unsound predicates of the Keim Court. Those predicates being (a) the Keim and Pawelec Courts' common dependence upon since discredited *Frye*[1], per *Daubert*[2], and(b) the implicit Keim and Pawelec Courts, common, incongruous dependence on the animate, self-serving, oral evidence over that of voluminous inanimate, indicting, comparative stylistic evidence generated by or under the auspices of Attorney Richard DiSalle, his secretary-typist Frances M. Gray, and the Ciaffoni

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[1]See "Cases Cited" in Table of Contents.

[2]See "Cases Cited" in Table of Contents.

family bookkeeper Elizabeth J. Cowden, the respondent herein.

7. Exhibit 3 [H21] is an 18 May 1978, page 19 transcript wherein Judge Keim specifies that "the only way justice can be done" is by a "trial by jury." That is, that a jury, at the trial level, would decide the issues consistently presented by the applicant herein. When he was confronted with the indicting evidence of some forty, uncontested, genuine will exemplars from DiSalle's law office, Judge Keim injudiciously refused to admit the same into evidence and dismissed the jury. See 27 August 1979 decision of Judge Keim[3]. That decision is the precursor to *Ciaffoni I*[4]. Five of six participating justices of this Court subsequently, and with like injudiciousness, "affirmed" Judge Keim in *Ciaffoni I*. Shortly following the termination of the September 1978 Keim Court trial, this applicant had occasion to interview the foreman of the dismissed jury. After examining the suppressed DiSalle office exemplars, then numbering "forty-some" wills, that foreman offered that their "was no question" that he would have found in favor of the contestants (one of which was the applicant Robert J. Ciaffoni herein) and against the proponents (one of which was the respondent Elizabeth J. Cowden herein.)

8. By its refusal to grant allocatur, not only has this court refused to permit subsequent adjudications to be heard (much less determined) by a jury, it has permitted DiSalle's "close friends" and collegial and lesser associates in this Court and lesser Pennsylvania

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[3]See "Cases Cited" under Table of Contents.

[4]See Cases Cited" under Table of Contents.

courts to consistently participate or unilaterally to make decisions, all of which have, with invariable regularity, been unsound and adverse to the applicant herein. Illustrative, and far from exhaustive, is a 29 April 1983 letter requesting contributions to finance the election of "Judge Nicholas P. Papadakos" to this Court. A note in the upper, left-hand corner reads "Hon. Richard DiSalle, general Finance Manager." See Exhibit 4 [H23].

9. The failure of the recusal of Justice Papadakos is far greater than the hypothetical failure of the recusal of Justice Flaherty or Justice Larsen. The failure of Justice Papadokos to recuse himself is akin to the failure of Judge Donald E. Wieand of the Superior Court to recuse himself in his unsound and foundational decisions of denial adverse to applicant. See applicant's 16 June 1992 "Motion to Recuse...." Justice Papadakos and Judge Wieand are publicly documented, equivalent "close personal friends" of DiSalle. By that relationship, and by the Rules of Ethics, it was imperative that both jurists should have precluded themselves from sitting in judgment of "the read defendant" DiSalle. The failure of Justice Papadakos to recuse himself is certainly the type of injudicious act that would cause the Larsen indicting grand jury to conclude that it is but another example of wide judicial improprieties, characteristic of this Court.

10. By Justice Montemuro's stated participation in the 7 June 1994 order, it is similarly established that the aforesaid Rules of Ethics have been violated. Justice Montemuro, minimally, and a simultaneous colleague on the Superior Court with then Judge Richard DiSalle (December 1980 to January 1982), by his failure to recuse himself in the 7 June 1994 order, creates an aura of impropriety and accompanying appearance of bias that has characterized the case at

bar from its inception in the fall of 1974.

11. The comparative stylistic determined machinations that unequivocally label the pair of questioned wills (dated 29 November 1967 and 10 May 1968 and proffered by DiSalle in his 15 September 1977 deposition (and subsequently as the typewritten work product of Gray) as being other than that purported by the three advocates thereof, would have been impossible without close cooperative acts between DiSalle and Cowden.

12. The comparative stylistic fingerprint certainty that DiSalle and Gray collusively perjured themselves as to the physical source of the 10 May 1968 will is no longer open to question. In *Ciaffoni I and II*,[5] as in *Kane's Estate*[6] undisputed physical facts "destroy" Cowden's case. That is implicitly why the Superior Court, the Pawelec Court and Cowden have consistently failed and refused to address the underlying determinant issues of the testamentary and physical sources of the pair of questioned wills proffered by the advocates hereof.

13. In its refusal to thus far grant allocatur, this Court has implicitly and injudiciously endorsed the failures and refusals referenced herein. The certainty of collusive perjury and fraud by the three advocates of the pair of questioned wills is premised on the codifying fruition and academic endorsement of the tenets of comparative stylistics and the ultra-ideal circumstances of DiSalle's office during the decade-plus (1959-1970)

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[5]See "Cases Cited" in Table of Contents.

[6]See "Cases Cited" in Table of Contents.

employment of Frances M. Gray as that office's singular employee and girl-Friday. All of which is capped off with thirty (30) additional DiSalle office, DiSalle authenticated will exemplars that became available to the applicant herein, subsequent to Judge Pawelec's injudicious, 19 July 1983 cut-off date for admitting any additional evidence -- regardless of the circumstances -- because of Judge Pawelec's acknowledged requests by Cowden.

14. By Justice Montemuro's stated participation in the 7 June 1994 order, it is similarly established that the aforesaid Rules of Ethics have been violated. Justice Montemuro, minimally, as a simultaneous colleague on the Superior Court with then Judge Richard DiSalle (December 1980 to January 1982), by his failure to recuse himself in the 7 June 1994 order, creates an aura of impropriety and accompanying appearance of bias that his characterized the case at bar from its conception in the fall of 1974.

15. By Justice Nix's participation in the 7 June 1994 order, it is again established that the aforesaid Rules of Ethics have been violated. Justice Nix, with Justices Flaherty and Larsen, were three of the five participating, lock-step justices in the now obviously incongruent and infamous 30 April 1980, applicant-adverse decision (491 Pa. 46) by this Court.

16. Beginning with the initial three and one-half years (fall of 1974 to 2 May 1978) of the underlying case at 63-74-942, this case was presided over and applicant-adversely manipulated by DiSalle's judicial colleague on the Washington County Bench, Honorable Paul A. Simmons. Said manipulation of the judicial system by Judge Simmons extended to his approximate decade-

long (1978-88) tenure as a member of the U.S. District Court of Western Pennsylvania. In *Clifford I*[7], Judge Simmons incongruously ruled that the obvious propriety of "applying physical evidence of stylistic alternatives in grammar and format to solutions of questioned writings" was "inherently untrustworthy" and amounted to mere "surmise[8] and speculation" essentially mimicking the untenable arguments of Cowden and the Keim and Pawelec Courts. In *Clifford II*[9], Judge Simmons was resounding reversed by the Third Circuit Court of Appeals. That monumental reversal, like that of Judge Keim as cited in *Ciaffoni II*[10], was premised on the trial court's incongruent and ultimately unsuccessful attempt to discredit the above cited propriety of the tenets of comparative stylistic evidence.

17. The aforesaid "incongruent" descriptor in the final sentence of item 16 above, stems from:

a. This Court's affirmation, without rationale, of the Earl S. Keim Trial Court's now obviously unsound suppression (60 Washington County Reports 88 (27 August 1979)) of that which is currently termed comparative stylistic evidence, and

b. Justice Robert's eloquently detailed dissenting opinion, implicitly endorsing the admissibility and applicability of said comparative stylistic evidence.

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[7]See "Cases Cited" in Table of Contents.

[8]Corrected from "surprise," per record and *Clifford I*.

[9]See "Cases Cited" in Table of Contents.

[10]See "Cases Cited" in Table of Contents.

18. The foregoing scattered "infamous" descriptors stem from (a) this Court's 8 January 1981, written denial of DiSalle's role in the inner workings of this Court during the very time that this Court handed down an applicant-adverse ruling (see Exhibit 2), and (b) this Court's 20 May 1982 unprecedented reversal of its own "final" decision, just three weeks after being charged with denial of due process (550 F. Supp. 1246) by the applicant herein (and others), in the U.S. District Court of Western Pennsylvania. The 20 May 1982 reversal was a readily inferable act that this Court had admittedly abused its discretion on 30 April 1980. In his 15 November 1982 decision U.S. District Judge Donald E. Ziegler ruled that "the relief sought is not ripe for adjudication." (550 F. Supp. 1250). Certainly, that relief is currently ripe if this Court maintains its failure to grant this applicant's allocatur.

19. Current conditions make it imperative to grant the relief sought, and by so doing, to make further amends for this Court's 30 April 1980 debunker and that of the debunkers of the Pawelec and Superior Courts in their common disregard of this Court's 20 May 1982 mandate to not only admit but also to apply the voluminous and superb comparative stylistic evidence presented by this applicant. The referenced "ripe[ness]" by Judge Ziegler (550 F. Supp. 1250) has certainly become a realty because there are currently: (a) more than sufficient indicting physical facts in the vastly enlarged numbers of DiSalle office exemplars (now totalling 349 deeds and 126 wills), (b) more than sufficient, authoritative rationale: comparative stylistics and gramformprints, (c) more than sufficient authoritative writers endorsing the tenets of the aforesaid rationale (illustrative only): J. Bentham; D. Carpenter (20 AmJur POF 265); E. Cleary; O. Hilton; McCormick

(on Evidence); A. S. Osborn; Weinstein and Berger: (Weinstein's Evidence); Wigmore (on Evidence), (d) more than sufficient case law establishing precedent of the courts' endorsement of aforesaid evidence and accompanying rationale (illustrative only): *Ciaffoni II*[11], *Clifford II*[12], *Daubert*[13], *Kane*[14] *and Uhls*[15], (e) more than sufficient evidence that this Court has been fully apprised of the certainty of the comparative stylistic determined, conspiratory fraud by advocates DiSalle, Gray and Cowden as to the physical and testamentary origins of the pair of questioned wills dated 29 November 1967 and 10 May 1968, (f) more than sufficient evidence that this Court has thus far failed and refused to meet its responsibility to dispense justice in the case at bar, and (g) more than sufficient evidence that this Court has fostered and encouraged a pattern of abuse of discretionary power within the Pennsylvania judiciary, ostensibly to protect one of its own; that is, former substantial payroll recipient of the integral makeup of each of the four upper levels of the Pennsylvania judiciary; that is Attorney Richard DiSalle. See also items 9 through 13 above.

20. The citing of authoritative writers Ordway Hilton and John Henry Wigmore (the original author of Wigmore on Evidence) in item 19(c) above, are of special

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[11]See "Cases Cited" in Table of Contents.

[12]See "Cases Cited" in Table of Contents.

[13]See "Cases Cited" in Table of Contents.

[14]See "Cases Cited" in Table of Contents.

[15]See "Cases Cited" in Table of Contents.

significance. Those of the writings of Hilton, because of:

a. The utter dependence of all three of the advocates of the pair of questioned wills on Hilton's now obviously misleading, 11-page, 16 December 1977 report, premised as it is on shamefully inadequate exemplars furnished and otherwise completely controlled by "real defendant" DiSalle. Said misnamed "exemplars" consist of non-deed and non-wills from DiSalle's office, completely ignoring the Hilton-otherwise-endorsed tenets of the conventional examination of questioned writings and those of the recently codified techniques of comparative stylistics. Said endorsing tenets of Hilton were itemized and previously submitted to this Court[16].

b. The repeated failure and written refusal of Hilton to consider the scores of authenticated DiSalle office deeds and wills made available to him (and pertinent trial courts) by this applicant as exemplified by the pair of reciprocal letters dated 1 August (one page) and 7 August 1980 (two pages) in the second of which Hilton effectively acknowledges receipt of the exemplars that were part of this applicant's 25 July 1980 "Motion for New Trial, Nunc Pro Tunc." Exhibit 5 [H25] is copies of said letters. Cited in Hilton's 7 August 1980 letter are injudicious and obviously unenforceable restrictive controls of the trial courts led by DiSalle's judicial colleague on the Washington County bench, Honorable Paul A. Simmons. Your attention is directed to the fourth paragraph of Hilton's 7 August 1980 letter.

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[16]See 28 February 1994 submission, Record "a", R.182a, item 9 (Wigmore), and R.192a, item 30 (Hilton); that is numbered items 9 and 30 of PART III of 82-page, "Comparative Stylistics and Gramformprints."

c. The Socratic and authoritative nature and often quoted references to Hilton's voluminous writings, one of the more prominent of which is Scientific Examination of Questioned Documents (rev. 1982).

d. Above all, the hypocrisy of Hilton is manifest to the same extreme of certainty that Hilton's 16 December 1977 report fails to elicit the Socratic absolutism that the advocates of the pair of questioned wills committed collusive perjury as to the determinant issues of the physical and testamentary origins of said wills.

21. The writings of Wigmore are a special interest because of:

a. Their broad endorsement of, and their like dependence upon, by the vast majority of the courts of this Country, including the Supreme Court of the United States and this Court.

b. The specific citing of a comparative stylistic endorsing facet ("Habit and Routine Practice") from (Wigmore on Evidence by this Court in its monumental *Ciaffoni II*.[17]

c. Wigmore's other specific, multiple endorsements of the tenets of comparative stylistics, itemized and previously submitted to this Court by this applicant.[18] Exhibit 6 [H29] is an intervening, recent

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[17]See "Cases Cited" in Table of Contents.

[18]See 28 February 1994 submission, Record "a", R.182a, item 9 (Wigmore), and R.192a, item 30 (Hilton); that is numbered items 9 and 30 of PART III of 82-page, "Comparative Stylistics and Gramformprints."

writing by this applicant titled: "Socratic Absolutism in Solutions to Questioned Writings Via Nonidentity and Negative (Versus Affirmative) Stylistic Habits." Exhibit 6 combines pertinent cites from that of Hilton's and Wigmore's most prominent writings, as the same pertain to the underpinning, Cowden-unrebutted and unrebuttable proofs of the "Socratic Absolutism...." of the fraudulence of the aforesaid pair of questioned wills.

22. This Court's 7 June 1994 denial of allocatur, if allowed to stand acts to deprive the applicant herein of his day in court contrary to Article 1, Sections 1, 6 and 11, and Article 5 of the Constitution of the Commonwealth of Pennsylvania, and contrary to Amendment V and XIV of the Constitution of the United States of America.

23. For all of the reasons set forth herein and to return a measure of lost integrity to this Court stemming from its prior injudicious acts, and its recent failure to react to the latest abuse of discretionary power by the Pawelec and Superior Courts in the case at bar, it is requested that the qualifying members of this Honorable Court grant the requested allocatur.

Respectfully submitted,

/s/ Robert J. Ciaffoni

Robert J. Ciaffoni
Comparative Stylist
311 Crawford Street
Canonsburg, PA 15317
Phone: 412-745-3270

14 June 1994

EXHIBIT 1, 14 June 1994

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

In Re: Estate of Paul Ciaffoni	: No. 98 Western Dstr.
	: Allocatur Dkt. 1994
Deceased	:
	: Petition for Allowance
Petition of: Robert J. Ciaffoni	: of Appeal from the
	: Superior Court

ORDER

PER CURIAM

AND NOW, this 7th day of June 1994, the Petition for Allowance of Appeal from the Superior Court is hereby denied.

Mr. Justice Flaherty did not participate in the consideration of decision of this matter.

Mr. Justice Montemuro is sitting by designation as Senior Justice pursuant to Judicial Assignment Docket No. 94 R1800, due to the unavailability of Mr. Justice Larsen, see No. 127 Judicial Administration Docket No. 1, filed October 28, 1993.

A true Copy Irma T. Gardner
as of ***6-7-94***
Test: ***/s/ Irma T. Gardner***
Deputy Prothonotary
Supreme Court of Pennsylvania

The Supreme Court of Pennsylvania
Western District

Charles W. Johns, Esquire
Prothonotary
Irma T. Gardner
Deputy Prothonotary

801 City-County Building
Pittsburgh, PA
15219-2563
(412) 565-2816

June 7, 1994

Mr. Robert J. Ciaffoni
311 Crawford Street
Canonsburg, PA 15317

In Re: Estate of Paul Ciaffoni, deceased
Petition of: Robert J. Ciaffoni
No. 0098 W. D. Allocatur Docket 1994

Dear Mr. Ciaffoni:

Enclosed is a certified copy of the Order dated June 7, 1994, denying your Petition for Allowance of Appeal.

Very truly yours,

/s/ Irma T. Gardner

DEPUTY PROTHONOTARY

itg:abg
cc: Geoffrey R. Johnson, Esquire
Hon. Edmund S. Pawelec, A.J.

EXHIBIT 2, 14 June 1994

No. 80-775

SUPREME COURT OF THE UNITED STATES

October Term, 1980

CONCETTA CIAFFONI, ET AL.
PETITIONERS

V.

ELIZABETH COWDEN, ET AL.
RESPONDENTS

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH
OF PENNSYLVANIA

PETITION FOR REHEARING AS TO PETITION FOR WRIT OF CERTIORARI

Theodore E. Breault, Esq.
1000 Lawyers Building
Pittsburgh, PA 15219
(412) 391-8230

—♦—

[For the complete copy of this Writ, See Appendix E pages E1 to E5.]

. . . concerned if it were during criminal court, when the jury is here and all of us are not involved in criminal cases.

MR. CEISLER: One problem is that here we call a very small jury, and we may not have enough.

THE COURT: Right now, you can almost bank on my thinking is it is going to be a jury trial, because it is tight. I have heard those people arguing out there. No matter what I decide, I will be a crook all my life, and you fellows will be a crook all your lives, so we will leave it to the twelve people, the jurors. I am saying right now that I favor a trial by jury. I know it is a matter of discretion. I am going to now indicate, and all of you know, it is going to be a trial by jury. It has been requested, and it will be granted. I am going to grant it strictly on the basis that it has been going on so long, and there have been so many things done and undone and redone and redone and overdone, maybe, but I think the only way justice can be done, in the eyes of the public, will be by jury.

MR. LEWIS: We don't object.

MR. CEISLER: Neither do I.

MR. AKER: Are we trying to fix a date now?

[For title page, see H22.]

IN THE COURT OF COMMON PLEAS OF
WASHINGTON COUNTY, PENNSYLVANIA

(Orphans' Court Division)

In Re:	)	
	)	
Estate of	)	
	)	No. 63 - 74 - 942
Paul Ciaffoni,	)	
	)	
Deceased.	)	

TRANSCRIPT OF THE PROCEEDINGS AT THE CONFERENCE WITH THE HONORABLE EARL S. KEIM, J., ON THURSDAY, MAY 18, 1978, AT 10:25 A.M., IN THE CHAMBERS OF COURTROOM NUMBER FIVE, COURTHOUSE, WASHINGTON, PENNSYLVANIA.

MARY JANE DREYER
Official Court Reporter

Exhibit 4, 14 June 1994

Committee to Elect
Judge Nicholas P. Papadakos
for
Supreme Court



Hon. Edward P. Zempreili
General Chairman

Hon. Richard DiSalle
General Finance Chairman

General Campaign Headquarters
816 FIFTH AVENUE
PITTSBURGH, PA 15219
(412) 391-7399

April 29, 1983

Pittsburgh, PA 15219

Dear

Thank you for your recent contribution of $100.00, received April 21, 1983, to Judge Nicholas Papadakos' campaign for the Pennsylvania Supreme Court. Your support is greatly appreciated.

As you well know, a statewide campaign is expensive. I want you to know how much the Judge and his family

appreciate your support and commitment to his campaign.

With your support, and the support of others throughout the Commonwealth, I'm confident we will be successful in our efforts.

Best wishes,

/s/ John

John P. Milliron
Treasurer

P.S. By the way, it's difficult to keep asking your proven friends for help over and over again, but we're counting on your continued help in your community to spread the word about this campaign, and to remind people to vote on election day.

John Milliron, Campaign Coordinator
228 State Street, Harrisburg, PA 17101
(717) 233-4283

EXHIBIT 5, 14 June 1994

ORDWAY HILTON
EXAMINER OF QUESTIONED DOCUMENTS
POST OFFICE BOX 592
LANDRUM, S.C. 29356

(803) 457-2860

Established New York City
(1946-1979)

Diplomate, American Board
of Forensic Document
Examiners

American Academy of
Forensic Science

American Society of
Questioned Document
Examiners

7 August 1980

Mr. Robert J. Ciaffoni
311 Crawford Street
Canonsburg, PA 15317

Dear Mr. Ciaffoni:

I am writing pursuant to our telephone conversation of last week and in reply to your letter of August 1.

I am agreeable, as the impartial Court expert, to carry out the various examinations which you outlined verbally over the telephone under the following conditions.

First and foremost that you withdraw your objections to the Estate of Paul Ciaffoni paying my bill of September 29, 1978 for all services and disbursements to

that date. I can see no reason for my having to wait further for reembursement for out of pocket expenses incurred in 1977 and 1978 in the amount of over $900.00 and for services duly rendered in accordance with my appointment as the Court's expert by Judge Simmons. In 1977 I was told by him that my appointment was agreed upon by all parties. If you would want to attach a proviso on your agreeing to this payment that you still have a right to urge the court to assess the charges against some parties of the litigation, and if successful, the estate be reembursed by them, this would at least allow me to be paid as I should have been some time ago.

Secondly, I have not acted in this matter in connection with any examinations without the direction of the Court. Thus I will make the necessary examinations that you are interested in if so directed by Judge Keim or any judge who might succeed him in connection with the case.

Thirdly, I would ask for written assurances concurred to by contestants and the Estate that upon my reporting on any subsequent examination or other work my bills would be paid promptly.

I shall not try to answer all your objections to payment of my bill but should point out that I had advised Judge Simmons when he was appointing me that I had been retained previously by Margaret Soviero. It was then that he told me that she and all others approved of my serving. It was Judge Simmons who assisted me in obtaining documents I needed from Judge DiSalle, and he approved of the way they were submitted to me. The conference with Mr. Sprague was at his request, and if Mr. Aker had

requested to confer with me I would have arranged that as well. Finally, the only examination which I discussed with Mrs. Soviero which was not carried out was the step to open the will to inspect the grommet holes and other possible evidence hidden by the binding. Both Judge Simmons and Judge Keim, I believe, ruled that the will would not be taken apart.

Again let me say that under the conditions stated above I will be perfectly willing to make those examinations which might be requested through the court.

Very truly yours,

/s/ Ordway Hilton

Ordway Hilton

Copies to:
Hon. Earl S. Keim
Mr. Robert Ceisler

311 Crawford Street
Canonsburg, PA 15317

August 1, 1980

Mr. Ordway Hilton
P. O. Box 592
Landrum, South Carolina 29356

Dear Mr. Hilton:

Pursuant to our telephone conversation I am enclosing the 25th of July 1980 Motion For New Trial, Nunc Pro Tunc (Paul Ciaffoni Fraud-Based Will Contest), and the 4th of December 1978 Exceptions wherein the contestants make exceptions "for the Estate of Paul Ciaffoni to pay the bill for Ordway Hilton".

Also enclosed is an order form from Forensic Science International, which I had mentioned briefly.

Very truly yours,

/s/ Robert J. Ciaffoni

Robert J. Ciaffoni

RJC:jw

Copy to:
The Honorable Earl S. Keim
Richard A. Sprague, Esquire

EXHIBIT 6, 14 June 1994

SOCRATIC ABSOLUTISM IN SOLUTIONS TO QUESTIONED TYPEWRITINGS VIA NONIDENTIY AND NEGATIVE (VERSUS AFFIRMATIVE) STYLISTIC HABITS

---

1. Page 3*: "Preliminary Considerations -- the great majority of documents are written on paper...by typewriter...."

2. Page 10*: "NONIDENTITY of Source -- It is a basic axiom of identification in document problems...a limited number of differences, even in the face of numerous strong similarities, are controlling and ACCURATELY establish NONIDENTITY."

3. Page 161*: "NONIDENTITY of Writings -- Everyone seems to appreciate that two writings ARE NOT by the same individual when there are a vast number of differences, but a few fundamental dissimilarities may not seem to lead to so POSITIVE a conclusion. Nevertheless, they do."

4. Page 250*: "*Identification of Typist* -- The factors by which a typist can be identified are almost as varied as the habits of the individuals concerned...With all typists...considerations of the habits of arrangement, punctuation, capitalization, choice of alternative or optional symbols, spelling, hyphenation, phraseology, mode of correction, [i.e., stylistic habits] may point out an individual...[but will 'ACCURATELY' and 'POSITIVE[LY]' NONIDENTIFY YET ANOTHER INDIVIDUAL,]" per Socratic absolutism, above and below.

5. Section 93**: "Habit ....the admissibility of a person's habit, usage or custom as evidence that he did or DID NOT do the act in question may be said to be universally conceded."1 Note 1 cites Rule of Evidence 406(a) and (b), "Habit; Routine Practice."

6. Section 376**: "Individual Habit...that *NEGATIVE HABIT* may be shown, and not merely an affirmative one, seems unquestionable."

* Scientific Examination of Questioned Documents, Ordway Hilton (rev. 1982). Hilton is (a) voluminous writer, (b) a widely quoted authority on questioned writings, (c) the Questioned Documents Editor of the "Forensic Science International Journal." Emphasis added.

** Wigmore on Evidence (latest edition). item 6: italicized "negative habit" by Wigmore. Other emphasis added.

See "C.S. & GFP," PART III, item 9 & 30.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 98 W.D. Allocatur Docket 1994

In Re: Estate of Paul Ciaffoni, Deceased
Application of Robert J. Ciaffoni

APPLICATION FOR RECONSIDERATION
OF 7 JUNE 1994 ORDER

PROOF OF SERVICE

I hereby certify that I served the foregoing captioned matter on 14 June 1994 by First Class Mail, Certificate of Mailing, addressed as follows:

Superior Court of Pennsylvania
Attn: Prothonotary
801 City-County Building
Pittsburgh, PA 15219
(Hand Delivered)

Richard A. Sprague, Esquire
135 S. 19th Street
Philadelphia, PA 19103

14 June 1994 ***/s/ Robert J. Ciaffoni***

Robert J. Ciaffoni, pro se

VERIFICATION

Under the penalties of 18 Pa. C.S. Section 4094, relating to unsworn falsification to authorities, I verify that the facts set forth in the foregoing captioned matter are true and correct to my personal knowledge, information and belief.

14 June 1994

/s/ Robert J. Ciaffoni
Robert J. Ciaffoni, pro se
Comparative Stylist
311 Crawford Street
Canonsburg, Pa 15317
Phone: 412-745-3270

Supreme Court, U.S.
FILED
JAN 19 1995
OFFICE OF THE CLERK

(2)

No. 94-1132

In The

Supreme Court of the United States

October Term, 1994

ROBERT J. CIAFFONNI,

Petitioner,

vs.

ELIZABETH C. COWDEN,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

RICHARD A. SPRAGUE
Counsel of Record
GEOFFREY R. JOHNSON
SPRAGUE & SPRAGUE
Attorneys for Respondent
135 South 19th Street
Suite 400
Philadelphia, Pennsylvania 19103
(215) 561-7681

6209
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

BEST AVAILABLE COPY

11pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner in attempting to obtain review of a state supreme court judgment refusing to entertain a collateral attack on a final judgment in a will contest has articulated any valid basis under 28 U.S.C. § 1257 for this Court to exercise jurisdiction over this matter?

2. Whether Petitioner has articulated any special or important reason why this Court ought to grant the Petition for Writ of Certiorari in this matter?

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NO. 94-1132

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

ROBERT J. CIAFFONNI,

Petitioner,

vs.

ELIZABETH C. COWDEN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION

Respondent, Estate of Ciaffonni, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the decision of the Pennsylvania Supreme Court entered on August 18, 1994.

OPINIONS AND JUDGMENTS BELOW

1. *In Re Estate of Ciaffoni*, Court of Common Pleas of Washington County, No. 63-74-942, dated January 12, 1993, Order denying Robert J. Ciaffoni's third motion for new trial.

2. *In Re Estate of Ciaffoni*, Superior Court of Pennsylvania, at No. 278 Pittsburgh 1993, dated December 1, 1993, Order quashing Robert J. Ciaffoni's appeal.

3. *In Re Estate of Ciaffoni*, Superior Court of Pennsylvania, at No. 278 Pittsburgh 1993, dated January 28, 1994, Order denying reargument to Robert J. Ciaffoni.

4. *In Re Estate of Ciaffoni*, Supreme Court of Pennsylvania, at No. 98 W.D. Allocatur Docket 1994, dated June 7, 1994, Order denying Robert J. Ciaffoni's Petition for Allowance of Appeal.

5. *In Re Estate of Ciaffoni*, Supreme Court of Pennsylvania, at No. 98 W.D. Allocatur Docket 1994, dated August 18, 1994, Order denying Robert J. Ciaffoni's Application for Reconsideration of 7 June 1994 Order.

STATEMENT OF THE CASE

Petitioner seeks review of the Judgment of the Supreme Court of Pennsylvania denying review of an Order of the Superior Court of Pennsylvania quashing an appeal from an Order of the Court of Common Pleas of Washington County, dated January 12, 1993, denying Petitioner's third motion for post-trial relief. Petitioner is attempting to relitigate matters that have been finally litigated, and further is abusing the processes of the court in a self-indulgent exercise in futility.

On September 23, 1974, Paul Ciaffoni died, survived by his wife, Concetta, and seven children. Paul Ciaffoni's will was admitted to probate by the Register of Wills of Washington County on December 16, 1974. Thereafter, a will contest commenced that has now spanned twenty-one (21) years.

The will contest was first tried in the Orphans' Court of Washington County in September 1978. The will was upheld by the Orphans' Court and the contestants appealed directly to the Pennsylvania Supreme Court on the ground that certain evidence had been improperly excluded at trial.

Initially, the Pennsylvania Supreme Court affirmed the decision of the trial court. *In re Estate of Ciaffoni*, 491 Pa. 46, 417 A.2d 1136 (1980). Subsequently, reargument was granted and the Order of the trial court was vacated and the case remanded for a new trial at which the contestants could introduce the evidence that had been excluded at the first trial. *In re Estate of Ciaffoni*, 498 Pa. 267, 446 A.2d 225 (1982).

On remand, the Honorable Edmund S. Pawelec was specially appointed to preside over the retrial of the case. The matter was retried in June and July, 1983. On June 22, 1987, Judge Pawelec issued an opinion upholding the validity of the will, and a decree dismissing the contestant's appeals. (A 2).

Thereafter, exceptions were taken to the decree and opinion of Judge Pawelec. This was Robert J. Ciaffoni's first motion for post-trial relief. A court *en banc* was convened to consider the exceptions. After full briefing and argument, an Order was issued on February 16, 1988 denying the exceptions.

On April 13, 1989, again after full briefing and argument, the Superior Court issued a Memorandum Opinion and Order affirming the order of the *en banc* court and adopting the opinion of the trial court. *Appeal of Robert J. Ciaffoni*, Superior Court of Pennsylvania, No. 393 Pittsburgh,

1988. The Superior Court specifically stated in its Memorandum Opinion:

> We have thoroughly reviewed the record, briefs, applicable case law, the trial court's fifty-four page opinion in this case, and the order of the court *en banc* and find no merit to the issues raised on appeal. We find, in agreement with the court *en banc*, that the trial court thoughtfully and comprehensively analyzed the testimony and issues and properly applied the relevant law. Moreover, we find that the trial court addressed the discernable thrust of the contentions that appellant raises in the instant appeal and arrived at the proper conclusion regarding each issue.

Appeal of Robert J. Ciaffoni, *id.* at 6-7.

On or about July 10, 1989, Robert J. Ciaffoni filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania seeking review of the Memorandum Opinion and Order of April 13, 1989. On December 28, 1989, the Supreme Court of Pennsylvania entered a *per curiam* Order denying the Petition for Allowance of Appeal.

On or about September 3, 1990, Robert J. Ciaffoni filed a document captioned as a Motion for New Trial *Nunc Pro Tunc*. Robert J. Ciaffoni's Motion for New Trial, *Nunc Pro Tunc*, which was his second request for post-trial relief from the opinion and decree of Judge Pawelec of June 22, 1987, consisted of mostly a regurgitation of the arguments that had previously been rejected by the Pennsylvania appellate courts, as well as a collection of unsubstantiated assertions of

conspiracy by various persons against Robert J. Ciaffoni. On September 6, 1990, counsel for the Estate filed and served an Application to Quash, or in the Alternative to Deny, Pro Se Motion for New Trial *Nunc Pro Tunc*.

On or about November 18, 1992, Robert J. Ciaffoni filed a document captioned Second Motion for New Trial, *Nunc Pro Tunc*, in fact, Robert J. Ciaffoni's third motion for post-trial relief. The essence of Robert J. Ciaffoni's Second Motion for New Trial *Nunc Pro Tunc* is a rehash and regurgitation of Robert J. Ciaffoni's theories of "comparative stylistics" and "gramformprints." On December 9, 1992, the estate, through counsel, filed an Application to Quash, or in the Alternative Deny, Second Motion for New Trial, *Nunc Pro Tunc*.

On January 12, 1993, the trial court, per Judge Pawelec, issued a decree dismissing Robert J. Ciaffoni's Second Motion for New Trial, *Nunc Pro Tunc*, stating:

> A review of this petition makes clear that this is simply an attempt to revisit and relitigate the issues that were previously determined, after extensive hearings, by this court in a Decree and opinion dated June 22, 1987. This Decree was affirmed by a court *en banc*, and by the Superior Court of Pennsylvania. The Supreme Court of Pennsylvania denied allocatur.

See, Decree dated January 12, 1993. (B 1).

On February 3, 1993, Petitioner appealed to the Superior Court of Pennsylvania. On March 3, 1993, Respondent filed a Motion to Quash the Appeal. On December 1, 1994, the

Superior Court issued a *per curiam* Order granting Respondent's motion to quash. (B 2). The Superior Court denied reconsideration of that Order on January 28, 1994.

A Petition for Allowance of Appeal was filed in the Supreme Court of Pennsylvania on February 16, 1994. By Order dated June 7, 1994, the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal. (H 18). By Order, dated August 18, 1994, the Supreme Court denied reconsideration of its Order denying the Petition for Allowance of Appeal. (B 3).

SUMMARY OF THE ARGUMENT

Petitioner has failed to articulate any reason why this Court ought to exercise its jurisdiction in this matter.

REASONS FOR DENYING WRIT

Petitioner fails to cite the correct statute for invocation of this Court's jurisdiction. Whereas petitioner cites 28 U.S.C. § 1254 governing appeals from Courts of Appeals, the actual jurisdictional prerequisite is 28 U.S.C. § 1257 governing appeals from state courts. The error is significant inasmuch as the grounds for review of a state court decision are substantially more circumscribed than the grounds for review of a decision of a court of appeals. Petitioner has failed to articulate any valid basis for this Court to exercise jurisdiction under 28 U.S.C. § 1257. Rather, Petitioner highlights the fact that he is simply continuing to collaterally attack a final judgment.

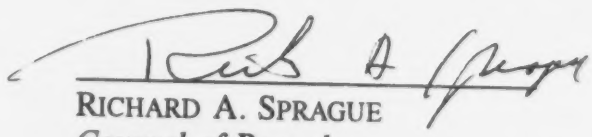
Petitioner also fails to cite any reason why this Court ought to grant the petition for writ of certiorari under SUP. CT. R. 10.1. Petitioner's rote recitation of a due process violation is without substance and serves only as a mechanical

phrase devoid of substance or meaning. Again, Petitioner's focus is on the factual dispute which has been fully and finally decided adversely to Petitioner, and not on the issue before this Court -- whether there is any basis for this Court to review an Order of a state supreme court refusing to entertain a collateral attack on a final judgment.

CONCLUSION

For the reasons stated herein, it is respectfully requested that this Honorable Court enter an Order denying the Petition for Writ of Certiorari.

Respectfully submitted,



RICHARD A. SPRAGUE
Counsel of Record
SPRAGUE & SPRAGUE
135 S. 19TH STREET, SUITE 400
PHILADELPHIA, PA 19103
(215) 561-7681
Counsel for Respondent

Of Counsel
GEOFFREY R. JOHNSON

DATED: JANUARY 18, 1995
PHILADELPHIA, PENNSYLVANIA

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

ROBERT J. CIAFFONI,
PETITIONER

v.

ELIZABETH C. COWDEN,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE COMMONWEALTH

OF PENNSYLVANIA

PETITIONER'S REPLY BRIEF

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I. By The Improper Substitution of "Respondent, Estate of Paul Ciaffoni" for "Elizabeth C. Cowden, Respondent," On Page One of Respondent's Brief in Opposition, Respondent Attempts to Insure The Continued Misuse Of Estate's Funds To Finance Respondent's Defense Of A Fraud Perpetrated By And In Behalf Of The Respondent, And Upon The Legal Heirs Of Paul Ciaffoni, Of Which The Petitioner Is One.

1. The referenced improper substitution of "Estate--" for "--Cowden" on page one of Respondent's brief is one of the more readily apparent, and obviously important subterfuges condoned by a questionably motivated and accommodating Pennsylvania judiciary. The subterfuge is intended to continue to make the estate responsible for expenses incurred by Respondent in her capacity as the proponent of the questioned probated will dated 10 May 1968. A comparatively monetarily miniscule, and yet-to-be-instituted trust has been the "excuse" to obligate the estate for the prodigious sums of money, primarily in the form of legal fees, incurred by, and behalf of Respondent in her compacity as the proponent of the 10 May 1968 questioned probated will.

2. The subterfuge was initiated under the aegis of Washington County Common Pleas Court Judge Paul A. Simmons. Judge Simmons presided over the estate will contest proceedings from its inception in the Fall of 1974 until his ascension to the U.S. District Court of Western Pennsylvania, on 2 May 1978. The illegal practice of the misuse of estate funds to finance Respondent's costs has thus been "insured" by the aforesaid manipulative substitution. The same was formerly complained of to a non-responsive Pennsylvania judiciary. For more about the collegial relation-

appearances of judicial bias,[2] and especially so when that charge is unrebutted, as in the instant case.

6. On page 5 of Respondent's 18 January 1995 brief reference is made to Petitioner's 18 November 1992 "Second Motion for New Trial, *Nunc Pro Tunc*," as a repeat presentation of "Robert J. Ciaffoni's theories of "comparative stylistics" and "gramformprints." The following two numbered sub-items, (a) and (b), minimally illustrate that the essence of the referenced "theories" are not restricted to the Petitioner, nor are the applciable "theories" restricted to comparative stylistics and gramformprints:

a. See item III, page 7, below.

b. Appendix K is Petitioner's latest on-going codifying rationale on applying physical evidence of stylistic alternatives in grammar and format to nonidentity-of-typist solutions to questioned type-writings. Appendix K is titled "Proof Beyond a Moral Certainty." "Proof Beyond..." is readily and fully adaptable to the instant case. The descriptor "proof beyond a moral certainty" is applicable in defining the absence of Gray as the typist of the pair of questioned wills. The "supplanting typist" is applicable in defining the presence of Respondent Cowden as the typist. "Proof Beyond..." is a complementary extension of Petitioner's writing titled "Socratic Absolutism in Solutions to Questioned Typewritings Via Nonidentity and Negative (Versus Affirmative) Stylistic Habits." [See H29.] For a 35-count of "[s]ome of the more evident deviations in the stylistics of grammar and format of the

---

[2]*Commonwealth Coatings Corp. v. Continental Casualty Co.*, 89 S.Ct. 337 (1968).

'68 will when compared to the invariable habits and routine practices manifested in the DiSalle-Gray office, will and deed exemplars," see Appendix F, R.209a, item XXVII and R.109a-115a. R.109a-115a is item III of Petitioner's "(First) Motion For New Trial, Nunc Pro Tunc" submitted to the Pawelec Court on 3 September 1990. [See R.101a] To this day, Judge Pawelec has not responded to that 3 September 1990 motion.

7. In general, the "therories" underpinning Petitioner's ongoing codification of "comparative stylistics" and "gramformprints" ("C.S. & GFP") are substantially premised on habit and routine practice evidence, wherein the focus is upon nonidentity-of-typis solutions to questioned writings. Desirably that questioned writing is a realty disposing will under the logo of a sole practitioner's law office, singly staffed by a longtime (at least four years) secretary-typist, who turns out scores of deeds and wills annually. Yet more desirably, there are availabale from the public record, a minimum of five each of contemporaneously dated (within two years of the questioned will) deed and will exemplars predating, and a like number, postdating the questioned will, all under the same office logo, and all dated during the employment period of the same longtime secretary-typist. Even more desirably, there is a second will dated months apart from the initial one. Ideally, as in the instant case, there are substantially greater numbers of deed and will exemplars than the desirable minimum, and their numbers not only postdate and predate the pair of questioned wills, but they also interdate that same pair.

In the instant case, during the contemporary period (1Jan66-31Dec69) chronologically bracketing in the pair of questioned wills (29Nov67 and 10May68)

there are some 218 qualifying deed and will exemplars: 164 deeds and 54 wills. Of the 164 deeds: 81 predate, 27 interdate, and 56 postdate the pair of questioned wills. Of the 54 wills: at least 23 predate, at least 8 interdate, and at least 19 postdate the pair of questioned wills. The four remaining wills (four-digit year dates only) enlarge one or more of each of the three listed categories. For more detail and the comparative stylistic significance of the "four-digit year dates," see, *inter alia*, Appendix F, R.87a, items E and F. on the pair of questioned wills proffered by the advocates thereof. [See, *inter alia*, Appendix F, R.87a, items E and F.]

The "substantially premised" role of habit and routine practice evidence in *Commonwealth v. Burns*, 409 Pa. 619 (1963), a successfully prosecuted criminal case, speaks to the unquestionable propriety of that same type of evidence in the instant civil case. At page 623, the Pennsylvania Supreme Court states:

> [T]he Commonwealth's purpose in submission of its evidence was to establish the corpus delecti by showing the habits and way of life of Marie Coleman and the consistency of her practice[s]....Her customs were well known...
>
> The Commonwealth advances its position of establishment of the corpus delecti by showing a...woman with a consistent pattern of living for many years and a sudden and abrupt termination of such pattern...

At page 626, the record reads:

> [T]he corpus delecti, like other facts, may be

established by circumstantial evidence.

The Commonwealth's prosecutor in *Burns* was Philadelphia Attorney Richard A. Sprague, the present and consistent attorney for the Respondent in the instant case since 1977. Consider the foregoing in light of DiSalle and Sprague's hypocritical, castigating testimony relative to stylistics evidence in the instant case. For DiSalle, see Appendix F, R.302a-306a, wherein at R.305a, DiSalle states: "I thought it was something silly..." and at R.306a: "I just thought it was a bunch of nonsense...." For Sprague, see D44-D70, and D35-D38, items 3, 4, 5 and 6. For DiSalle and Sprague, see, *passim*, G7-G17.

III. The Combined, Ongoing Enlargement OF Rationale And Evidence In Establishing The Fraud Of Determinant Perjured Testimony, As To The Physical And Testamentary Origins Of The Pair Of Questioned Wills Proffered By The Advocates Thereof, Speaks Loudly And Clearly To Enhance, And To Be Enhanced By, "Robert J. Ciaffoni's Theories Of 'Comparative Sytlistics' And 'Gramformprints,'" ("C.S. & GFP")

1. Illustratively, of the 37 "Harbingers of Comparative Stylistics" listed in PART III (F2, R.178a), only item 12 (R.184a), Scientific Evidence in Criminal Cases, Moenssens, et al, Third Edition (1986) derogates (however incongruently), rather than endorses, the tenets of comparative stylistics. Per its 15 January 1995 release, the successor Fourth Edition, retitled *Scientific Evidence in Civil and Criminal Cases*, implicitly reverses its position with the following paragraph at page 258 thereof:

> Questioned document examination should

APPENDIX J

Excerpt from *Rubinsky v. Kosh*, 296 Pa. 285, 289 (1929).

The contents of *Rubinsky* is annotated with respect to nomenclature of the status of the relevant players and unobtrusive, descriptive data. Annotations are indicated by square brackets.

[Petitioner's] pleadings fully stated the facts from which [the fact finder] could properly find the fraud; but it is not necessary to specify them here, since [Respondent] (by her statement of the questions involved, which limits the scope of [Respondent's Reply Brief]: *Com. ex rel. v. Snyder*, 294 Pa. 555), does not question their sufficiency to show the fraud, but only denies [Petitioner's] right to prove them in the present state of the record. If their sufficiency had been challenged, we would unhesitatingly reach the same conclusion on the point as the [Petitioner] did.

[Respondent's] first contention is that the [12 January 1993] decree of the orphans' court [Judge Pawelec, presiding] [dismissing the Petitioner's 18 November 1992 "Second Motion for New Trial, Nunc Pro Tunc,"] being ...unreversed, is a conclusive bar to [Petitioner's] claim. This would be so, of course, but for the fraud averred in the pleadings. "But in the eye of the law, fraud spoils everything it touches. The broad seal of the Commonwealth is crumbled into dust, as against the interest designed to be defrauded. Every transaction of life between individuals, in which it mingles, is corrupted by its contagion. Why then, should it find shelter in the decrees of courts? ***There*** is the last place on earth where it ought to find refuge.

But it is not protected by record, judgment or decree; whenever and wherever it is detected, its disguises fall from around it, and the lurking spirit of mischief, as if touched by the spear of Ithuriel, stands exposed to the rebuke and condemnation of the law": *Mitchell v. Kintzer*, 5 Pa. 216, 217 [1847]. This principle has never been doubted by us; on the contrary, it has often been recognized and applied: *Jackson v. Summerville*, 13 Pa. 359, 369 [1850]; *Phelps v. Benson*, 161 Pa. 418 [1894]; *Smith v. Markland*, 223 Pa. 605, 629 [1909]; *West Homestead Borough v. Erbeck*, 230 Pa. 316, 318 [1911].

APPENDIX K

Proof Beyond a Moral Certainty [1]

"[Comparative] stylistics [2] establish nonidentity of writer [of questioned writings]." On 13 October 1989, that provocatively evidentiary-titled writing (less the implied addends) appeared on the editorial page of the *Observer-Reporter* of Washington, PA. The provocation of that 1989 writings is here vastly enlarged.

That 1989 writing and this writing are premised on the telltale significance of the combination of the numerous stylistic alternatives in grammar and format, and the individualized habits and routine practices inherent in the repetitive reduction of like writing to paper. "Writer" is the focus in the 1989 writing. In this writing, "typist" is the focus -- more specifically, "nonidentity of typist."

Overview Item O-7e
"Comparative Stylistics (C.S.)
and
Gramformprints (GFP):
Their Application in Solving Questioned Writings,
Focusing on Lawyer-Logotyped Wills" (102 pp.)

Proof Beyond a Moral Certainty

"Nonidentity of typist" is presented as an exemplification of the coupling of comparative stylistics and the Socratic method [3]. The incisive, respective "matter-of-fact" and "clear-expression-of-a-truth" elements of those two techniques reach their epitome when premised on force of habit [4]. Force of habit is a peculiarly ingrained dimension of typewriting. Because of that peculiarity, "typist" is more appropriate than "writer" as the final word in the culminating sentence of the 1989 writing: "Discrepancies in clearly demonstrated [comparative] stylistic patterns serve, with a certainty analogous to fingerprints, to establish nonidentity of [typist]."

Three questions set the stage for the indubitable proof, and beyond, in justification of the above phrase, "with a certainty analogous to fingerprints":

A. Who didn't type the questioned writing?
B. Who typed the questioned writing?
C. How can answers to questions A and B be determined?

The following responses to the above questions include explanations why the question-C-determination relative to question A, is far more certain, and yet the reasons are much less demanding, than that of the same determination relative to question B.

Solutions premised on nonidentity of typist, do so in response to question A. Nonidentity determinations are premised on the inherently enlarged detectabilty associated with the negative in repetitive, like typewritings. The results are answers with consensual

minimal to zero doubt, even when premised on limited absences of known comparative stylistic patterns of a putative typist.

Solutions premised on identity of typist, do so in response to question B. Identity determinations are premised on the inherently reduced detectability associated with the affirmative in repetitive, like typewritings. The results are answers with arguably minimal to significant doubt, even when premised on a plurality of presences of known comparative stylistic patterns of a putative typist.

Consider the above response to question A, when the normally controlling "limited absences" are in reality, a "plurality of absences." Consider further, the void created by that plurality of absences, and the filling of that void by the comparative stylistic individualities of a supplanting typist. Under that not uncommon and expectantly combined set of realities, the justification of the phrase, "with a certainty analogous to fingerprints," takes on the attributes of *proof beyond a moral certainty*.

"Nonidentity," "pattern" and "justification" phenomena are here applied to questioned, repetitive, like typewritings. Upon reflection, it is apparent that those phenomena and their "moral certainty" reinforcements, are also applicable in solutions to many common problems -- usually with less "force-of-habit" idealism than here presented -- but nonetheless, as matters of every day's experience and reasoning.

Proof Beyond a Moral Certainty

[1] **Moral certainty**. That degree of assurance that induces a man of sound mind to act, without doubt, upon the conclusions to which it leads.... -- *Black's Law Dictionary*, Sixth Edition (1990).

[2] **Comparative stylistics.** An evidential technique focusing on nonidentity of typist of questioned writings. Matter-of-fact solutions are premised on comparisons of the numerous stylistics alternatives in grammar and format, and the individualized habits and routine practices inherent in the repetitive reduction of like writings to paper, with emphasis on typewritings. -- *Black's Law Dictionary*, Sixth Edition (1990).

[3] **Socratic [method].** [S]ystematic doubt and questioning...to elicit a clear expression of a truth supposed to be implicitly known by all rational beings. -- *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (1993).

[4] **Force of habit**. Behavior made automatic or involuntary by repeated practice. -- *Merriam-Webster's Collegiate Dictionary*, Tenth Edition (1993).

See "C.S. & GFP," OVERVIEW items 0-7a to 0-7d.
21 December 1994
Robert J. Ciaffoni
Comparative Stylist
